Supreme Court, U. S.
FILED
SEP 13 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

77-395

CITY OF PHILADELPHIA

v.

JOHN E. BULLION, *Appellant*

JURISDICTIONAL STATEMENT ON APPEAL FROM THE COMMONWEALTH COURT OF PENNSYLVANIA

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977

City of Philadelphia

v.

John E. Bullion, *Appellant*

JURISDICTIONAL STATEMENT ON APPEAL FROM THE COMMONWEALTH COURT OF PENNSYLVANIA

OPINION BELOW

The opinion of the Commonwealth Court of Pennsylvania from which the present appeal is taken is reported at 368 A.2d 1375 and the official report of this opinion has not yet been reported. A copy of this opinion is attached hereto as Appendix "A". The opinion of the Common Pleas Court of Philadelphia County is unreported and is attached hereto as Appendix "B". The Supreme Court of Pennsylvania did not file an opinion with its order denying the Petition for Allowance of Appeal.

STATEMENT OF JURISDICTION

1. This suit was brought by the Appellee as an action for the collection of a debt in the Court of Common Pleas of Philadelphia County. Service of original process upon the Appellant as a defendant was made by the Sheriff of Philadelphia County pursuant to 42 Pa. C.S. §8301, *et seq.* at the Appellee's direction. The Appellant filed Preliminary Objections to the jurisdiction of the court pursuant to Pa.

R.C.P. 1017(b)(1). The judgment of the Court of Common Pleas was entered on May 2, 1975, and was appealed to the Commonwealth Court of Pennsylvania which entered the order to be reviewed on February 8, 1977. The Appellant filed a timely Petition for Allowance of Appeal in the Supreme Court of Pennsylvania, but that Petition was denied by Order entered on June 15, 1977, a copy of which is attached as Appendix "C". The Appellant filed the Notice of Appeal to this Honorable Court in the Commonwealth Court on August 3, 1977, a copy of which is attached hereto as Appendix "D".

2. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by Title 28 U.S.C. §1257(2). The judgment in the present case under Pennsylvania law is final for the purposes of appeal under the Act of March 5, 1925, P.L. 23 §1, 12 P.S. §672. The following decisions sustained the jurisdiction of the Supreme Court of the United States to review the judgment on direct appeal in this case:

Rosenblatt v. American Cyanamid Company, 86 S.Ct. 1, 15 L. Ed. 2d 39 (1965);
Hanson v. Denckla, 357 U.S. 235 (1958);
Fiske v. State of Kansas, 274 U.S. 380 (1927);
Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954);
Interstate Circuit, Inc. v. City of Dallas, 390 U.S. 676 (1968); and
American Motorists, Ins. Co. v. Starnes, 425 U.S. 637 (1976).

This case drew in question the validity of Title 42 Pa. C.S. §§8304, 8307 and 8309, and involves The Buck Act, Title 4 U.S.C. §§106 and 108. These two statutory provisions involved are lengthy and are attached hereto as Appendices "E" and "F", respectively.

In the event this Honorable Court does not consider an appeal to be the proper and appropriate procedure for review, Appellant requests that the papers and proceedings herein be regarded and acted upon as a Petition for Certiorari under Title 28 U.S.C. §2103.

QUESTIONS PRESENTED BY APPEAL

1. Did the Congress in passing The Buck Act, 4 U.S.C. §§105-110, clearly and specifically recede its Federal constitutional power of exclusive legislative jurisdiction over Federal enclaves under Article I, Section 8, Clause 17 to the state, thereby allowing the state to impose its long-arm statute upon a non-resident Federal employee who had worked upon a Federal enclave within the state?

2. In the case of an individual who is a non-resident of the state, who had no direct contact with the state other than travelling through it to a Federal enclave, and who had been a mere minor employee of the Federal government during the time he worked upon the Federal enclave, is the Due Process Clause of the Fourteenth Amendment of the United States Constitution violated by the state's seeking to obtain *in personam* jurisdiction upon the individual by use of the state's long-arm statute in a legal action arising out of his activities on the Federal enclave?

STATEMENT OF THE CASE

John Bullion, during the years 1971 through 1973, was employed by the Federal government as an engineering technician by the Ground Support Equipment Department of the Naval Air Engineering Center located at the Philadelphia Naval Base. This Naval Base was ceded by the Commonwealth of Pennsylvania to the United States government during the 1860's as an exclusive jurisdiction Federal enclave with the sole reservation to the Commonwealth of Pennsylvania of the right to serve the State's legal process within the enclave. During the time of his employment and to the present, Mr. Bullion was a resident of the State of New Jersey.

In February of 1975, the City of Philadelphia instituted a civil action against Mr. Bullion, alleging that due to his employment upon the Federal enclave, Mr. Bullion was assessed the City's Wage Tax which he failed to pay. The Plaintiff instructed the Sheriff of Philadelphia County to use the Pennsylvania long-arm statute, 42 Pa. C.S. §8301, *et seq.* to serve Mr. Bullion by mailing a copy of the Complaint to the Secretary of the Commonwealth of Pennsylvania and to Mr. Bullion's home address in the State of New Jersey.

Mr. Bullion filed in the Philadelphia County Court of Common Pleas, Preliminary Objections to the Complaint limited to the court's lack of personal jurisdiction over him. In these Preliminary Objections Mr. Bullion raised the issues that he was a mere employee and that his place of employment was upon an exclusive jurisdiction Federal enclave. On brief and argument to the court, he raised the Federal questions of the repugnancy to the Due Process Clause of the Fourteenth Amendment and to Article I, Section 8, Clause 17 of the United States Constitution of the application of the Pennsylvania long-arm statute to him.

In an opinion by the Honorable Stanley M. Greenberg of the Court of Common Pleas of Philadelphia County

dated September 2, 1975 (Appendix "B"), the Court of Common Pleas passed upon these two Federal questions as well as the state question of whether Mr. Bullion was "an individual doing business" under the terms of the State's long-arm statute. Judge Greenberg recognized the existence of the exclusive jurisdiction of the Federal government over the enclave but concluded that The Buck Act, 4 U.S.C. §106(a)(Appendix "F") inferred a recession of jurisdiction to the State to impose its long-arm statute upon persons who had been located within the enclave.

As to the Federal question of whether the exercise of the long-arm statute upon the Defendant was a violation of the Due Process of Law, Judge Greenberg relying upon the Pennsylvania Supreme Court's decision in *Kiker v. Philadelphia*, 346 Pa. 624, 31 A.2d 289, *cert. denied*, 320 U.S. 741 (1943), stated as follows:

> "It is clear from the foregoing that the Defendant, by his taking advantage of the privilege of working in Philadelphia, has shown the 'minimal contacts' necessary to satisfy the Due Process requirement. Further, in view of these contacts, it is quite reasonable for this Court to extend its jurisdiction over the Defendant and thus in no way offends the Court's traditional notions of fair play and substantial justice." (Appendix "B", A16).

Judge Greenberg's overruling of Mr. Bullion's Preliminary Objections were appealed as an appealable interlocutory order concerning personal jurisdiction to the Commonwealth Court of Pennsylvania. After briefing and oral argument before the court *en banc*, the Commonwealth Court, by the late Honorable Harry A. Kramer, affirmed the order of the lower court. Judge Kramer, in his preliminary statement of the matter before the Court, stated as follows:

> "Appellant's contention that use of the long-arm statute was improper in this instance to obtain in

personam jurisdiction is based upon the following three arguments: (1) the Commonwealth of Pennsylvania does not have legislative jurisdiction to require appellant to designate the Department of State as his agent for service of process as provided for in the Pennsylvania long-arm statute; (2) appellant was not an individual 'doing business' in Pennsylvania under the terms and intent of the statute; and (3) personal jurisdiction obtained by long-arm statute over a non-resident employed within a Federal enclave violates the Due Process Clause of the United States Constitution." Appendix "A", A2).

Judge Kramer's Opinion acknowledges that Mr. Bullion worked upon a Federal enclave over which the Commonwealth of Pennsylvania only reserved the power to serve its process within the enclave, but stated the following as the basis for his holding:

"Though insufficient by itself, this reservation of power combined with the power of the Federal Government receded to Pennsylvania by the Buck Act[7] permitting states and local authorities to tax personal income within Federal enclaves, gives the Commonwealth the legislative jurisdiction necessary to deem the Department of State as appellant's agent for service of process." (Appendix "A", A3).

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7. 4 U.S.C. §§105-110.

Judge Kramer, after discussing the independent State question, then addressed the Due Process of Law question. The Court stated:

"Appellant's final argument is that regardless of whether or not he is found to be 'doing business,' application of the Pennsylvania long-arm statute to obtain jurisdiction in this instance violates the Due

Process Clause of the United States Constitution." (Appendix "A", A7).

The Court then reviewed this question and determined that the Due Process of Law was not violated.

Mr. Bullion, after notification of the adverse determination of the Commonwealth Court of Pennsylvania, filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania, Eastern District. Such an appeal is within the discretionary jurisdiction of the Supreme Court of Pennsylvania, and the Prothonotary of the Supreme Court of Pennsylvania entered an order on June 15, 1977, denying the Petition.

Presentation of Substantial Federal Question

A. Jurisdiction under 28 U.S.C. §1257(2).

The present appeal is from the affirmation by the Commonwealth Court of Pennsylvania of the Order of the Philadelphia County Court of Common Pleas overruling the Defendant's objection to the assertion of *in personam* jurisdiction by means of the State's long-arm statute, 42 Pa. C.S. §§8301-8311. The Supreme Court of Pennsylvania denied the Defendant a discretionary appeal from the Commonwealth Court's Order, thereby making the decision of the Commonwealth Court of Pennsylvania a final judgment of the highest court of the Commonwealth of Pennsylvania. This determination by the Commonwealth Court of Pennsylvania was a determination of an issue anterior to and separate from the merits, and which could not be reviewed again at the time of the determination on the merits. In the ruling by the Commonwealth Court, a final determination was made that the Defendant was personally within the jurisdiction of the courts of the Commonwealth of Pennsylvania.

The Defendant raised two Federal constitutional questions in his objection to jurisdiction in this case. The Defendant contended that the Commonwealth of Pennsylvania's imposing of its own legislative presumption of the designation of an agent for service upon a non-resident of the State employed upon a Federal enclave within the exterior boundaries of the State was violative of the Plenary Powers Clause of the United States Constitution, Article I, Section 8, Clause 17. Also, the Defendant contended that the imposition by the State of Pennsylvania of *in personam* jurisdiction on him as a non-resident of the State who had been employed by the Federal government upon a Federal enclave within the State, in an action for the collection of a tax assessed on his wages earned upon the Federal enclave, was violative of the Due Process Clause of the Four-

teenth Amendment of the United States Constitution. The Commonwealth Court of Pennsylvania reviewed both of these contended violations of the United States Constitution and determined that the Pennsylvania long-arm statute, as applied to the Defendant, was not violative of the United States Constitution.

It is, therefore, respectfully submitted that the present appeal is from a final judgment of the highest court of the Commonwealth of Pennsylvania in a case in which there was drawn into question the validity of a state's statute as applied to a defendant on the grounds that it was repugnant to the United States Constitution. Furthermore, the court made a decision in the favor of the validity of the state's statute. Thus, the present case is within the jurisdictional provisions of 28 U.S.C. §1257(2).

B. Reasons Why the Federal Questions Presented Are Substantial.

1. *There Exists a Conflict of Decisions of Various Jurisdictions as to Whether a State May Legislate and Impose Its Long-arm Service Statutes Upon Individuals and Corporations Located Within a Federal Enclave Within the State.*

This Honorable Court had long ago established that the reservation by a state of a right to serve process upon a Federal enclave established under Article I, Section 8, Clause 17 of the United States Constitution was limited to activities that took place outside of the enclave, and was not an authorization to regulate the activities upon the enclave. *Fort Leavenworth Railroad Co. v. Lowe*, 114 U.S. 525 (1885). In *U. S. v. Mississippi Tax Commission*, 412 U.S. 363, 377 (1973), this Court has recently reaffirmed its long-standing interpretation of the Plenary Powers Clause that the activities upon a Federal enclave are impervious to the regulatory legislation of the ceding state "as a territory of one of her sister states or a foreign land."

See, Standard Oil Co. v. California, 291 U.S. 242 (1934). Nevertheless, absent special legislative recessions of the power to legislate within the Federal enclave, there exists the conflict between the states and the circuits over whether a foreign individual or corporation that had acted within a Federal enclave is subject to the host state's long-arm or substituted service statutes.

In the present case the Commonwealth Court acknowledged that absent the separate recession by the United States Congress to the states, the reservation of the power to serve process *within* the Federal enclave was insufficient to allow imposition of the state's long-arm statute upon an individual who had only acted within the Federal enclave. (Appendix "A", A3). This is because the Supreme Court of Pennsylvania in *Brennan v. Shipe*, 414 Pa. 258, 199 A.2d 467 (1964), had previously so determined in a case concerning a motor vehicle accident upon a Federal enclave.

In addition to the present case on appeal and *Brennan v. Shipe, supra*, there are two Federal District Court cases that have also concluded that the states could not infringe upon the exclusive jurisdiction of the Congress over the Federal enclave by imposing its service statutes within the enclave. In *Berube v. White Plains Iron Works, Inc.*, 211 F. Supp. 457 (N.D. Maine 1962), the District Court held that the service was improper since the state had no legislative authority over the enclave. In *Stockwell v. Page Aircraft Maintenance, Inc.*, 212 F. Supp. 102 (M.D. Alabama, S.D. 1962), the Court was faced with a situation where service was made upon Federal land over which the state had concurrent jurisdiction, although the location was adjoining an exclusive jurisdiction Federal enclave. The Court held that if the substituted service had been attempted upon the Federal enclave, the service would have been improper; but, the service on land that was concurrent jurisdiction with the state was proper.

However, there also exists three Federal Court decisions that apparently conclude that the state can pierce

the Plenary Powers Clause to impose its state's substituted and long-arm service statutes. *Swanson Paint Company v. Painter's Local Union No. 260*, 391 F.2d 523 (9th Cir. 1968); *Ackerley v. Commercial Credit Co.*, 111 F. Supp. 92 (N.J. 1953); and *Knott Corporation v. Furman*, 163 F.2d 199 (4th Cir. 1947), *cert. denied*, 322 U.S. 809 (1947). All three of these cases concern foreign corporations doing business upon a Federal enclave. In each of these cases the courts found the foreign corporation had also made numerous and sufficient contacts with the state off of the enclaves involved.

Although the Appellant believes that the Pennsylvania court's holding that the Federal enclave may not be pierced by the state legislature for the purpose of imposing substituted service, there still exists a conflict among the various circuit and district courts concerning this Federal constitutional question. This Honorable Court should allow oral argument and briefing to finally resolve this substantial Federal question.

2. *This Present Case Concerns the Interpretation of Provisions of a Federal Statute Which Have Never Been Construed by This Honorable Court.*

In its attempt to breach the barrier of the Plenary Powers Clause of the United States Constitution, the Commonwealth Court of Pennsylvania was forced to interpret two provisions of The Buck Act, 4 U.S.C. §§105-110. (Appendix F) The Commonwealth Court realized that without a Congressional recession of powers to the State, the Commonwealth of Pennsylvania could not impose its long-arm statute upon the Appellant. (Appendix "A", A3). The Commonwealth Court had to interpret The Buck Act to determine whether it was the recession of powers that it felt was necessary. The Commonwealth Court interpreted the recession of the power to "levy and collect" income taxes "in the Federal area" as a further recession to the Commonwealth of the necessary legislative jurisdiction

to impose its long-arm statute in the Felderal enclave. By this inferred recession, the Commonwealth Court concluded that the long-arm statute did not violate the Plenary Powers Clause.

In addition, the Commonwealth Court recognized that there might be a conflict with the specific limitation of the recession of The Buck Act, 4 U.S.C. §108. Rather than interpreting this provision of The Buck Act strictly, the Commonwealth Court stated that there was no conflict with this provision since the State legislation "does not otherwise intrude upon or limit the exclusive jurisdiction of the United States on League Island." (Appendix "A", A4).

Sections 106 and 108 of The Buck Act have never been interpreted by any other court, including this Honorable Court, as to the extent and limitation of their recession of general legislative powers to the states over Federal enclaves. The only case in which this Honorable Court has previously reviewed §106 of The Buck Act was in *Howard v. Commissioners of Sinking Fund of the City of Louisville*, 344 U.S. 624 (1953). *Howard*, only determined that this Section of The Buck Act was intended to be a recession to the states of the power to "levy and collect the tax" within the Federal area. This Court did not interpret The Buck Act to provide further recessions to the states.

It is submitted that this Honorable Court is presented by this appeal with the substantial Federal question of the interpretation of the Federal statute. In the present appeal, the state court interpreted the Federal statute so as to increase the state's own powers over Federal areas. The interpretation of The Buck Act is a substantial Federal question which this Court should determine after briefing and oral argument.

3. *The Commonwealth Court of Pennsylvania Departed from the Required Manner of Interpretation of a Congressional Recession of Its Constitutional Powers.*

The Commonwealth Court concluded that the specific Congressional recession to the states in §106 of The Buck Act of the authority to "levy and collect" taxes within the Federal area "also grants the Commonwealth the necessary legislative jurisdiction to serve appellant according to the provisions of its long-arm statute." (Appendix "A", A4). It is the Appellant's contention that the Commonwealth Court improperly interpreted the Congressional recession provided for in §106(a) of The Buck Act.

This Honorable Court in *Hancock v. Train*, 426 U.S. 167 (June 7, 1976), was faced with a similar question of the interpretation of the extent of a Congressional recession of its exclusive legislative jurisdiction over Federal enclaves. This Court stated that Congress must make an affirmative declaration of its intention to allow the state to regulate an activity within a Federal enclave. *Mayo v. U. S.*, 319 U.S. 441 (1943). This Congressional declaration must be a clear and unambiguous mandate. *Kern-Limerich, Inc. v. Scurlock*, 347 U.S. 110 (1954); and *Paul v. U.S.*, 371 U.S. 245 (1963). A Congressional waiver of its constitutional obligations and powers must be determined under the cannon of strict construction and may not be inferred. Murchison, *Waivers of Intergovernmental Immunity In Federal Environmental Statutes*, 62 Va. L. Rev. 1177, 1181 (1976).

In the present case the Commonwealth Court not only failed to strictly construe the recession of §106(a) of The Buck Act but, in fact, inferred additional recessions that were not specifically mentioned. Furthermore, the Commonwealth Court totally failed to apply the specific Congressional limitations mandated by §108 of The Buck Act. It is submitted that this interpretation by the Commonwealth Court of Pennsylvania of a Federal statute concern-

ing Congress' constitutional powers was contrary to the enunciated rules of interpretation of *Hancock v. Train, supra*, and should be reviewed after briefing and oral argument.

4. *The Restrictions of Due Process for the Acquisition of Personal Jurisdiction Upon an Individual Were Violated in the Present Case.*

It has long been established that Due Process of Law requires a more "substantial connection" where a foreign individual is concerned as compared to a foreign corporation. *Flexner v. Farson*, 248 U.S. 289 (1919); and *Dougherty & Co. v. Goodman*, 294 U.S. 623 (1935). Although some commentators may contend this requirement has been abandoned during the course of the expansion of personal jurisdiction over foreign corporations, Currie, *The Growth of the Long Arm: Eight Years Extended Jurisdiction in Illinois*, 1963 U. Ill. L.F. 533, 560-561 (1963), such is not the case. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). In both *Magee v. International Life Insurance Company*, 355 U.S. 220, 223 (1957), and in *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), this Court has cited *Dougherty & Co. v. Goodman, supra*, as still the viable law of Due Process. It is the Appellant's contention that the stricter test of Due Process concerning a foreign individual has not been met in the present case.

In *Hanson v. Denckla*, this Court stated that the expansion of *in personam* jurisdiction was not intended to herald the "demise of all restrictions on personal jurisdiction of state courts". U.S. at 251. In reviewing the restrictions of "minimum contacts" in cases concerning foreign corporations, this Court has required that the suit itself must arise out of an act performed or transacted within the forum state, *Magee v. International Life Insurance Company, supra* at 223, that there was a purposeful availment of the privilege of acting in the state, *International Shoe Co. v. Washington, supra* at 219, and that "traditional notions of fair play and substantial justice" must be met. *Id.* at 316.

When the facts of the present case are measured against these "restrictions", it is clear that Due Process has been violated, especially in light of the requirement of stricter scrutiny under the *Flexner-Dougherty & Co.* line of cases. The Appellant was a minor employee of the Federal Government who was not licensed or regulated in any manner by the Commonwealth of Pennsylvania. All of the Appellant's activities were performed upon a Federal enclave over which the state's laws and benefits were nonexistent. The suit itself arises out of the Appellant's earning of wages upon the Federal enclave. (The assessment of the tax is not an operative fact upon which jurisdiction can be based. *See, U. S. v. Montreal Trust Company*, 358 F.2d 239 (2d Cir. 1966), *cert. denied*, 384 U.S. 919 (1966)).

As for "fair play and substantial justice," the Appellant is a wage earner who lives outside of the forum state. Obviously, the Appellee, as a large municipal corporation, would be less burdened by pursuing its case in a foreign tribunal. In this case, the "severe disadvantage" is clearly upon the Appellant. *Magee v. International Life Insurance Company, supra* at 223. Furthermore, the City eventually must file in New Jersey a legal action against the Appellant and serve him again, if it desires to collect on its Pennsylvania judgment upon the Appellant's assets in New Jersey. (New Jersey has not adopted the Uniform Enforcement of Foreign Judgments Act). Thus, the Appellant may be required to defend two separate lawsuits when only one in his home state would be more reasonable and just and all that is necessary. One can only speculate why the City prefers to litigate this matter twice—once in its "home court" and then in the New Jersey courts. The placement of the burden upon the Appellant of defending in a foreign tribunal is unreasonable in the present case.

This appeal presents the question of the proper application of the restrictions on personal jurisdiction of state courts upon foreign individuals to comply with Due Process. Since this case concerns a mere wage earner, this Federal question is of great importance to all of the citizens of the United States of America and not just those persons actively involved in commerce. Without this Court's review of this matter, Pennsylvania may well have heralded the demise of all restrictions on personal jurisdiction over foreign individuals.

Respectfully submitted,

KENNETH E. AARON
Counsel for Appellant

Appendix A

CITY OF PHILADELPHIA
v.
JOHN E. BULLION,
Appellant

IN THE
COMMONWEALTH COURT
OF PENNSYLVANIA

No. 737 C. D. 1975

Before: Honorable James S. Bowman, President Judge
Honorable James C. Crumlish, Jr., Judge
Honorable Harry A. Kramer, Judge
Honorable Roy Wilkinson, Jr., Judge
Honorable Glenn E. Mencer, Judge
Honorable Theodore O. Rogers, Judge
Honorable Genevieve Blatt, Judge

Argued: April 6, 1976—Philadelphia

Opinion by Judge Kramer Filed: February 8, 1977

This is an appeal by John Bullion (appellant) from an order overruling his preliminary objections raising questions on whether the Philadelphia County Court of Common Pleas lacks jurisdiction over his person.[1] We affirm.

At all times during these proceedings the appellant has been a resident of the State of New Jersey. During the years 1971 through 1973 inclusive, appellant was employed as a civilian engineer technician by the United States Navy at the Naval Air Engineering Center located at the United States Naval Base on League Island. The City of Philadelphia (appellee) alleges that appellant earned during these years various sums of money which are subject to its wage tax.[2] The City further alleges that appellant has failed to pay the tax or to file tax returns for the years in question.

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1. This appeal was separated from the various other consolidated Philadelphia tax appeals because it raises unique questions by means of preliminary objections.

2. Philadelphia, Pa., Code §19-1500 et seq. (1973).

Appellee served appellant pursuant to the Pennsylvania long-arm statute.[3] Appellant, contending such service was improper, filed preliminary objections based upon the court's jurisdiction over his person. His objections were overruled by the lower court and appellant appealed.[4]

Appellant's contention that use of the long-arm statute was improper in this instance to obtain in personam jurisdiction is based upon the following three arguments: (1) the Commonwealth of Pennsylvania does not have legislative jurisdiction to require appellant to designate the Department of State as his agent for service of process as provided for in the Pennsylvania long-arm statute; (2) appellant was not an individual "doing business" in Pennsylvania under the terms and intent of the statute; and (3) personal jurisdiction obtained by long-arm statute over a nonresident employed within a Federal enclave violates the Due Process Clause of the United States Constitution.

Appellant's contention that the Commonwealth has no legislative jurisdiction to obligate him to designate the Department of State as his agent for receipt of process is without merit. When Pennsylvania ceded League Island to the United States, it also ceded exclusive legislative jurisdiction over the area to the Federal Government.[5] The Commonwealth, however, reserved concurrent jurisdiction for service of civil and criminal process within the Federal enclave.[6] Such reservations have been upheld in order "to prevent these lands from becoming a sanctuary for fugitives from justice for acts done within the acknowledged jurisdiction of the state." *Fort Leavenworth Railroad Co. v.*

3. 42 Pa. C.S. §§8301-8311.

4. We deem the order and the appeal justifiable under the 1925 Act because the preliminary objections challenge the in personam jurisdiction of the trial court. Act of March 5, 1925, P.L. 23, 12 P.S. §672.

5. U.S. Const. art. I, §8, cl. 17.

6. Act of March 28, 1945, P.L. 91, *as amended*, 74 P.S. §120.46 et seq.

Lowe, 114 U.S. 525 (1885). This language has been construed as authorizing states "to execute civil and criminal process for acts done within the states on lands ceded to the Federal Government." *In re Thompson*, 157 F. Supp. 93, (F.D. Pa. 1957), *aff'd, sub nom. United States ex rel. Thompson v. Lennox*, 258 F. 2d 320 (3d Cir. 1958), *cert. denied*, 358 U.S. 931 (1959). Though insufficient by itself, this reservation of power combined with the power the Federal Government receded to Pennsylvania by the Buck Act[7] permitting states and local authorities to tax personal income within Federal enclaves, gives the Commonwealth the legislative jurisdiction necessary to deem the Department of State as appellant's agent for service of process.

The Buck Act provides pertinently:

> (a) No person shall be relieved from liability from any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and *such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.* 4 U.S.C §106. (Emphasis added.)

It has been settled that this legislation grants appellee the power to "levy and collect" taxes on income earned by nonresidents employed on League Island. *Non-Resident Taxpayers Association v. Muncipality of Philadelphia*, 341 F. Supp. 1139, 1142 (D. N. J. 1971), *aff'd. mem.*, 406 U.S. 951 (1972); *Kiker v. City of Philadelphia*, 346 Pa. 624, 633, 31 A.2d 289, 294, *cert. denied*, 320 U.S. 741 (1943).

7. 4 U.S.C. §§105-110.

More important to resolving the issue before this Court, however, is that the Buck Act grants "full jurisdiction and power to levy and collect . . . as though such area was not a Federal area." For purposes of taxation, this language puts League Island within the acknowledged jurisdiction of Pennsylvania. It also grants the Commonwealth the necessary legislative jurisdiction to serve appellant according to the provisions of its long-arm statute. Therefore, not to permit service under the power reserved by the Commonwealth when it ceded this land to the Federal Government is to allow the very result the Supreme Court desired to avoid in *Fort Leavenworth, supra.*

Moreover, it has been held that this same language extends the legislative jurisdiction of the Commonwealth to insure enforcement of any permitted tax statute or ordinance. *See City of Philadelphia v. Konopacki,* — Pa. Commonwealth Ct. —, 366 A.2d 608 (1976); *Philadelphia v. Cline,* 158 Pa. Superior Ct. 179, 44 A.2d 610 (1945), *cert. denied,* 328 U.S. 848 (1946). In order for appellee to enforce its ordinance in a judicial action it must make service of process. The Buck Act's recession of power and jurisdiction therefore grants Pennsylvania permission to enforce its ordinance by serving appellant in the same manner it would serve any other nonresident working in the City of Philadelphia. This includes service by means of the State's long-arm statute.[8]

The Pennsylvania long-arm statute's designation of the Department of State as appellant's agent for service of process does not otherwise intrude upon or limit the exclusive jurisdiction of the United States on League Island.

8. Section 7 of the Act, 42 Pa. C.S. §8307 provides for service "upon the Department of State, by sending by registered or certified mail, postage prepaid, a true and attested copy of such process, with the fee required by law, and by sending to the defendant, by registered or certified mail, postage prepaid, a true and attested copy thereof. . . ."

Service in such a manner therefore does not conflict with the general limiting provision of the Buck Act.[9]

Appellant next argues that he does not fit within any of the provisions of the long-arm statute. Section 4 of the Act, 42 Pa. C.S. §8304, entitled "Doing business by individuals," provides for jurisdiction over individuals who have done business in the Commonwealth.

> [A]ny nonresident of this Commonwealth who . . . shall have done any business in this Commonwealth . . . shall be conclusively presumed to have designated the Department of State as his agent for the receipt of service of process . . . if and only if at the time the cause of action accrued or the harm or financial loss occurred, [he] shall have been doing business within this Commonwealth. . . . *Bork v. Mills,* 458 Pa. 228, 329 A.2d 247 (1974).

Appellant contends that an employe does not qualify as an "individual" as intended under the Act. He argues that an employe does not act alone but that his actions are in conjunction with his employer. Alternatively, appellant argues that regardless of whether or not he qualifies as an individual, the services he rendered do not constitute "doing business" as was defined and meant under the Act. We cannot agree with either contention.

This cause of action arose from appellant's activities of working and earning income within the City of Philadelphia during the years in question. *See Kiker, supra.* The action of coming into Philadelphia daily to work at an employment was on appellant's behalf as an individual and

9. 4 U.S.C. §108 provides:

The provisions of sections 105 to 110 of this title shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area.

not on the behalf of his employer. *See generally, Miller v. American Telephone & Telegraph Company*, 394 F. Supp. 58, 62 (1975), *aff'd.*, 530 F.2d 964 (1976). For this reason appellant should be considered an "individual" as was meant to be included under the Pennsylvania long-arm statute.

It still must be answered, however, whether appellant's actions of coming into Philadelphia to work as an employe qualifies as "doing business" within the Commonwealth. Two of the ways in which "doing business" is defined in the statute under Section 9 of the Act, 42 Pa. C.S. §8309 are:

> . . . .
>
> (1) The doing by any person in this Commonwealth of a series of similar acts for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object.
>
> (2) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts.

The intent of the statute as conveyed by this language is to reach those people actuated by a profit motive, who act in Pennsylvania for their "pecuniary benefit."

Appellant argues that the compensation he received for his services as an employe cannot be considered a "pecuniary benefit." This phrase has been defined as "such things only as can be valued in money."[10] In *Hays' Estate v. Commissioner of Internal Revenue*, 181 F.2d 169, 171 (5th Cir. 1950), which involved a real estate transaction for Federal estate tax purposes, the court stated: "A pecuniary benefit means an increase in one's net worth by the receipt of money or property." The receipt of wages certainly increases one's net worth.

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10. Black's Law Dictionary 1288 (4th ed. 1951).

Appellant's reliance on *Branch v. Foort*, 397 Pa. 99, 152 A.2d 703 (1959) and *Sharp v. Valley Forge Medical Center*, 422 Pa. 124, 221 A.2d 185 (1966) is misplaced. There our Supreme Court held that for purposes of effecting service, a person's place of employment was not the same as his place of business. Such an interpretation insures that a defendant will receive notice of a complaint where he is employed at a large complex. Service here was made by registered mail, return receipt requested. Notice is therefore established. This writer does not otherwise read the above holdings as lending themselves to the question of whether working as an employe qualifies as "doing business" as defined under the State's long-arm statute. We conclude that appellant, by his activities, was doing business in Pennsylvania as defined and meant under the long-arm statute.

Appellant's final argument is that regardless of whether or not he is found to be "doing business," application of the Pennsylvania long-arm statute to obtain jurisdiction in this instance violates the Due Process Clause of the United States Constitution. The standard to be applied in determining such a violation was set forth in *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) and states:

> [D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

Pennsylvania courts have established the following guidelines to determine whether the requisite "minimum contacts" are present.

> First the defendant must have purposely availed itself of the privilege of acting within the forum state

> thus invoking the benefits and protections of its laws. . . . Secondly, the cause of action must arise from defendant's activities within the forum state. . . . Lastly, the acts of the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over it reasonable. . . . *Proctor & Schwartz, Inc. v. Cleveland Lumber Co.*, 228 Pa. Superior Ct. 12, 19, 323 A.2d 11, 15 (1974).

Applying this test to appellant's situation, we hold that the requisite "minimum contact" is present.[11]

It is settled that for purposes of this ordinance the Federal enclave of League Island is within the City of Philadelphia. *Kiker, supra.* Therefore, because appellant came to work daily during the years in question, he sufficiently availed himself of the privilege of acting within the forum state. It has similarly been decided that nonresident employes on League Island invoke benefits and privileges from the City of Philadelphia. *Kiker, supra*; *Non-Resident Taxpayers Association, supra.* The first test as enunciated in *Proctor, supra*, is therefore satisfied.

Appellant contends that the cause of action did not arise from his activities within the forum state as required by the second test. As discussed previously, appellant worked and earned wages in Philadelphia, incurring wage tax liability under the City's ordinance. His actions occurred therefore within the forum state. Furthermore, his actions of failing to file a return or pay the wage tax also occurred in the forum state.[12] The filing of the return and payment of the tax was to be done at City Hall Annex in Philadelphia. The failure to do this required legal act es-

---

11. Though the standard was established to find "minimum contacts" for a corporate defendant, these same standards are applicable to individual defendants if applied cautiously. *Stepnowski v. Avery*, 234 Pa. Superior Ct. 492, 340 A.2d 465 (1975).

12. Philadelphia may require this of appellant because of its taxation power over income earned within its geographic jurisdiction.

tablishes this location as the situs. *See In re Thompson supra.*

The final test in determining whether "minimum contacts" exist is whether the defendant's actions have a substantial enough connection with the forum state to make the exercise of jurisdiction over him reasonable. Appellant admits that the City of Philadelphia has a great interest in this action for the collection of its wage tax. Appellant's employment during the years in question was also continuous. In addition, his actions were actuated by a profit motive and for his "pecuniary benefit." *Compare Action Industries, Inc. v. Weideman*, 236 Pa. Superior Ct. 447, 455-7, 346 A.2d 798, 802-3 (1975) *with Stepnowski v. Avery, supra*, note 6. Appellant's activities have a substantial connection with the forum state. It is reasonable therefore for Pennsylvania to exert jurisdiction over the appellant.

There is also no evidence which suggests that defendant is incapable of defending this action in Philadelphia or that he is more than slightly inconvenienced. Indeed, this cause of action arose because appellant came to Philadelphia daily for at least three years for purposes of his employment. We do not believe in this instance that the traditional notions of "fair play or substantial justice" are offended by the exercise of jurisdiction over the appellant. We affirm.

/s/

Harry A. Kramer, Judge

Appendix B

CITY OF PHILADELPHIA
v.
JOHN E. BULLION

COURT OF COMMON PLEAS
FEBRUARY TERM, 1975
No. 4114

Opinion

GREENBERG, J. Dated: September 2, 1975

Defendant John E. Bullion filed Preliminary Objections to the Complaint of the City of Philadelphia, questioning this Court's jurisdiction over him personally, and the validity of the service of process upon him. Defendant's appeal is from this Court's overruling of said Preliminary Objections.

The City of Philadelphia instituted this action in Assumpsit in February of 1975, to recover City Wage Taxes which it claims were due from the defendant and unpaid by him for the years 1971, 1972 and 1973. During this time period, the Defendant was employed by the U.S. Naval Air Engineering Center at the Philadelphia Naval Base on League Island in Philadelphia, Pennsylvania. At all times during this period and subsequent to it, Defendant has been a resident of New Jersey. At no time did he reside in Philadelphia, nor work elsewhere in Philadelphia.

The Complaint was served on the Defendant pursuant to Pa. Rules of Civil Procedure 2079(a), and under the Pennsylvania Long Arm Statute, 42 P.S. §8301 et seq. The Sheriff effected service by sending copies of the Complaint to the Secretary of the Commonwealth by registered mail and to the Defendant by certified mail at his residence in New Jersey.

Defendant, in challenging this jurisdiction of the Court over him, and the service of process on him, has raised the issues of whether or not he was "doing business" under the Pennsylvania Long Arm Statute, 42 P.S. §8301

et seq., and whether or not Due Process of law has been violated.

First, the Philadelphia Naval Base on League Island, although a federal enclave, is within the boundaries of the City of Philadelphia and is a part of the city. *Kiker v. Philadelphia*, 346 Pa. 624, 633 (1943); *First Hardin Nat. Bank v. Fort Knox Nat. Bank*, 361 F.2d 276 (1966) Cert. Den. 87 S. Ct. 394, 385 U.S. 959. However, when Pennsylvania ceded the land for the Naval Base to the United States, 74 P.S. §120.46, it also ceded, pursuant to Art. I, §8, Cl.7 of the United States Constitution, exclusive legislative jurisdiction over the area to the Federal Government. The Commonwealth reserved with this transfer, concurrent jurisdiction for the service of its process, both civil and criminal, on the land so ceded, and retained all constitutionally permissible powers of taxation. 74 P.S. §120.47-49.

The States have had the power to impose and collect taxes from individuals working on or residing on a federal enclave since the passage of the *Buck Act*, 4 USCA §106, in 1941. This section of the Act provides:

> "(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.
>
> (b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940."

Under this Act, Philadelphia has the jurisdiction and authority to impose and collect its City Wage Tax, 19-1500

et seq., *The Philadelphia Code*, from non-Pennsylvania resident workers on the Naval Base. See *Kiker v. Philadelphia, supra*, 632-633; *Application of Thompson*, 157 F. Supp. 93, 97 (E.D.Pa., 1957).

Defendant argues that the language of the Act, i.e., "and collect such tax *in* any Federal area" (Emphasis Added) limits such collection to the Federal area, and that the collection of taxes through service of a Complaint pursuant to a long-arm statute, would be an improper extension of the *Buck Act*. Our reading of the Act, however, would indicate that it is permissive, i.e. merely giving the states the power to tax individuals on an enclave and giving the states an additional and necessary means to enforce the tax by allowing the collection of it on the Federal area. The Act is not intended to prevent the states from using already existing methods at its disposal, such as long-arm statutes, for collecting these taxes.

Service in this case was made pursuant to Pennsylvania's long-arm statute, supra, as Defendant resides in New Jersey and no longer works in Philadelphia. The applicable sections of the statute provide in part:

> "§8304 *Doing Business By Individuals* — Any non-resident of this Commonwealth who . . . shall have done any business in this Commonwealth on or after August 30, 1970, . . . shall be conclusively presumed to have designated the Department of State as his agent for the receipt of service of process in any civil action or proceeding instituted in the Courts of this Commonwealth against such individual, if and only if at the time the cause of action accrued or the harm or financial loss occurred, the non-resident . . . shall have been doing any business within this Commonwealth as heretofore provided."

Section 8309 defines "doing business" as follows:

> "Acts Affecting Jurisdiction — (2) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts."

There is no merit to Defendant's argument that he was not working within Pennsylvania. See *Kiker v. Philadelphia, supra*. Defendant further argues that, if found to have been working within Pennsylvania, that he was merely "employed" and not "doing business" as the statute requires. Defendant cites two cases in support of his position, neither of which is applicable to the case at Bar.

In *Branch v. DePaul*, 397 Pa. 98 (1959) and in *Sharp v. Valley Forge Medical Center*, 422 Pa. 124 (1965), service was made by leaving the Complaint at the Defendant's place of employment. Our Supreme Court held that for purposes of effecting service, a person's place of employment was not the same as his place of business. The reasoning behind this is readily apparent: it is much more likely that a defendant will receive the complaint, if not personally served, if it is left at his residence or place of business which he owns or operates, rather than at the place where he is only employed. This was especially true in the two cited cases where the place of employment of each defendant was a very large complex.

The distinction argued by the Defendant is not warranted by the language of the statute, nor does it appear that such a distinction was intended by the Legislature. Additionally, the recent amendments to the Act indicate that the Legislature intended to extend the Court's jurisdiction to the farthest reaches allowable under the Due Process provision of the Constitution. Defendant's activities in Pennsylvania clearly fall within the definition of "doing business" as defined in 42 P.S. §8309.

Defendant lastly argues that, because of the federal government's jurisdiction over the Naval Base, this Court's exercise of personal jurisdiction over him would be a violation of Due Process of law.

The United States Supreme Court has held that in acquiring in personam jurisdiction over a Defendant not within the forum state, the requirement of due process would be met if the Defendant had certain "minimum contacts" with the forum state, and if the "traditional notions of fair play and substantial justice" were not offended. *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154 (1945). In *McGee v. International Life Insurance Co.*, 355 U.S. 220, 78 S.Ct. 199 (1957), the Supreme Court held that one insurance contract issued in the forum state was sufficient to establish the court's jurisdiction over the Defendant, and that due process was not violated. In *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228 (1958), the Supreme Court added that the due process clause required a Defendant to have taken advantage of "the privilege of conducting activities within the forum state thus invoking the benefits and protections of its laws."

The Court in *Proctor & Schwartz, Inc. v. Cleveland Lumber Co.*, 228 Pa. Super. 12, 19 (1974), in determining that the "minimum contacts" were present, set forth the following test:

> "First, the Defendant must have purposefully availed itself of the privilege of acting within the forum state thus invoking the benefits and protections of its laws . . . Secondly, the cause of action must arise from Defendant's activities within the forum state . . . Lastly, the acts of the Defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over it reasonable."

While the enclave falls under federal jurisdiction, the Defendant is nevertheless protected by some of Pennsylvania's laws. Because of the difficulties that can result from the disappearance of state law in a federal area, remedial congressional legislation has frequently been passed for the retention of state law. Such provisions have

been made, for example, for actions for wrongful death or personal injury. See *Brennan v. Shipe*, 414 Pa. 258 (1964) and 16 U.S.C.A. §457.

With respect to additional benefits and protections received by non-resident taxpayers at the Naval Base, and as to minimal contacts, the Supreme Court of Pennsylvania has stated in *Kiker v. Philadelphia, supra*, 632, 633:

> "When the State does make such reservation in its act of cession, the obligation of furnishing protection and benefits to the persons and property within the confines of the ceded area impliedly remains in the State . . .
>
> There is no doubt that after the cession, Philadelphia was obligated to confer all the usual attributes of government—the same as those possessed by residents and citizens of Philadelphia—upon those deriving income from working on League Island; fire and police protection, the right to use all municipal facilities, etc. This obligation can be called into play at any time the national government refuses or neglects to furnish them . . .
>
> Plaintiff may at all times use the streets, bridges and other facilities of the City, and also has the benefit of protection of its police and fire departments when engaging in business or pleasure in that municipality, as well as many other advantages. It is common knowledge that the City of Philadelphia cuts all ice, and keeps the Delaware River navigable from the northern limits of the City to Chester, wherein the winter months navigation would otherwise be closed, making possible to plaintiff the transportation he uses to go to and return from League Island to his home in New Jersey. This is decidedly a benefit to him."

It is clear from the foregoing that the Defendant, by his taking advantage of the privilege of working in Philadelphia, has shown the "minimal contacts" necessary to satisfy the Due Process requirement. Further, in view of these contacts, it is quite reasonable for this Court to extend its jurisdiction over the Defendant and thus in no way offends the Court's traditional notions of fair play and substantial justice.

We have held that this Court has in personam jurisdiction over the Defendant and that the service of the Complaint on him was proper. Accordingly, the Defendant's Preliminary Objections were overruled.

BY THE COURT:

/s/

9/2/75

J.

Appendix C

SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

SALLY MRVOS
Prothonotary

LAURA E. LITCHARD
Deputy Prothonotary

PHILADELPHIA, 19107
June 15, 1977

Kenneth E. Aaron, Esq.,
Casper, Davidson, Rutstein & Aaron
Suite 935 Lafayette Building
Phila., Pa. 19106

In re: City of Philadelphia v.
John E. Bullion, Petitioner
No. 2957 Allocatur Docket

Dear Mr. Aaron:

This is to advise you that the Supreme Court has entered the following Order on the Petition for Allowance of Appeal in the above-captioned matter:

"June 10, 1977

Petition Denied
Per Curiam"

Very truly yours,

/s/
Sally Mrvos
Prothonotary

SMM:mb
CC: Stewart M. Weintraub, Esq.

Appendix D

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

CITY OF PHILADELPHIA
v.
JOHN E. BULLION,
Appellant

No. 737 C.D. 1975

NOTICE OF APPEAL

TO THE PROTHONOTARY:

Please be notified that JOHN E. BULLION, Appellant before the Honorable Court, appeals the entire Judgment of the Honorable Court of February 8, 1977, in the above captioned matter to the Supreme Court of the United States. This appeal is taken under 28 U.S.C. §1257(2).

/s/

By
Kenneth E. Aaron
Attorney for Appellant
Suite 935 Lafayette Building
Philadelphia, Pennsylvania 19106
(215) 629-1100

Filed: August 3, 1977

Appendix E

42 Pa. C.S. §8304. Doing business by individuals

Any nonresident of this Commonwealth who, acting individually under or through a fictitious business name, or through an agent, servant or employee, shall have done any business in this Commonwealth on or after August 30, 1970, or a resident of this Commonwealth who shall have done business in this Commonwealth on or after August 30, 1970 and thereafter shall have become a nonresident of this Commonwealth or shall conceal his whereabouts, shall be conclusively presumed to have designated the Department of State as his agent for the receipt of service of process in any civil action or proceeding instituted in the courts of this Commonwealth against such individual, if and only if at the time the cause of action accrued or the harm or financial loss occurred, the nonresident or the resident who shall thereafter have become a nonresident, shall have been doing any business within this Commonwealth as heretofore provided. 1972, Nov. 15, P.L. 1063, No. 271, §8304, eff. in 90 days.

42 Pa. C.S. §8307. Procedure for service of process

Process directed to persons under this chapter shall be served, by the officer to whom such process shall be directed, upon the Department of State, by sending by registered or certified mail, postage prepaid, a true and attested copy of such process, with the fee required by law, and by sending to the defendant, by registered or certified mail, postage prepaid, a true and attested copy thereof, with an endorsement thereon of the service upon the Department of State, addressed to such defendant at his last known address. The Department of State shall keep a record of the day and hour of the service of such process on it. The registered or certified mail return receipts of the Department of State and of such defendant shall be at-

tached to and made a part of the return of service of such process, except that if the defendant refuses to accept the notice mailed, or cannot be found at his last known address, the registered or certified mail return receipt or other evidence of such facts shall be attached to and made a part of the return and shall constitute sufficient service under the provisions of this section. The fee paid by the plaintiff to the Department of State at the time of the service shall be taxed as costs to the plaintiff, if he prevails in the action necessitating the service of the process. 1972, Nov. 15, P.L. 1063, No. 271, §8307, eff. in 90 days.

42 Pa. C.S. §8309. Acts affecting jurisdiction

(a) General rule.—Any of the following shall constitute "doing business" for the purposes of this chapter:

(1) The doing by any person in this Commonwealth of a series of similar acts for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object.

(2) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts.

(3) The shipping of merchandise directly or indirectly into or through this Commonwealth.

(4) The engaging in any business or profession within this Commonwealth, whether or not such business requires license or approval by the Commonwealth or any of its agencies.

(5) The ownership, use or possession of any real property situate within this Commonwealth.

(b) Exercise of full constitutional power over foreign corporations.—In addition to the provisions of subsection (a) of this section the jurisdiction and venue of courts of the Commonwealth shall extend to all foreign corporations

and the powers exercised by them to the fullest extent allowed under the Constitution of the United States.

(c) Exception.—Notwithstanding any other provision of this section, for the purposes of determining jurisdiction of courts within this Commonwealth, inspecting, appraising and acquiring real estate and mortgages, and other liens thereon, and personal property and security interest therein, and holding, leasing away, conveying and transferring the same, as fiduciary or otherwise, or collecting debts and enforcing mortgages and rights in property securing the same by any foreign corporation shall not constitute "doing business." 1972, Nov. 15, P.L. 1063, No. 271, §8309, eff. in 90 days.

Appendix F

4 U.S.C. §106. Same; income tax

(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940. July 30, 1947, c. 389, §1, 61 Stat. 641.

4 U.S.C. §108. Same; jurisdiction of United States over Federal areas unaffected

The provisions of sections 105 to 110 of this title shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area. July 30, 1947, c. 389, §1, 61 Stat. 641.

Supreme Court, U. S.
FILED
OCT 13 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-395

CITY OF PHILADELPHIA

v.

JOHN E. BULLION, *Appellant*

MOTION TO DISMISS OR AFFIRM

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and collect income taxes as if such area was not a federal area, enables the City of Philadelphia to use the Pennsylvania Longarm Statute to serve a Complaint in Assumpsit for delinquent taxes due from a non-resident individual, where such income is derived from activities within the City of Philadelphia 15

C. Service of process, pursuant to the Pennsylvania Longarm Statute, upon a nonresident employee of the Philadelphia Naval Base, Philadelphia, Pennsylvania, who receives wages therefor, who accrues wage tax liability thereby, who is doing business in Pennsylvania as defined by the Pennsylvania Longarm Statute, and who is within the jurisdiction of the Commonwealth of Pennsylvania, is not violative of the Due Process Clause of the Fourteenth Amendment to the the United States Constitution 21

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-395

CITY OF PHILADELPHIA, *Appellee*

v.

JOHN E. BULLION, *Appellant*

MOTION TO DISMISS OR AFFIRM

On Appeal From The Commonwealth Court of Pennsylvania

Appellee moves this Honorable Court to dismiss the appeal herein, or in the alternative, to affirm the decision of the Commonwealth Court of Pennsylvania on the ground that it is manifest that the question on which the decision of this action depends, is so insubstantial as not to need further argument.

OPINIONS BELOW

The opinion of the Court of Common Pleas of Philadelphia County (App. B in Jurisdictional Statement), has not been reported. The decision of the Commonwealth Court of Pennsylvania (Jurisdictional Statement App. A) is reported at 368 A.2d 1375. The denial of Appellant's Petition for Allowance of Appeal by the Supreme Court of Pennsylvania (Jurisdictional Statement App. C) has not been reported.

COUNTER-STATEMENT OF ISSUES PRESENTED

I. Does service of process pursuant to the Pennsylvania Longarm Statute upon a New Jersey resident employed upon a federal enclave within Philadelphia, Pennsylvania, regulate any activities of that federal enclave?

II. Does the reservation by the Commonwealth of Pennsylvania, on behalf of itself and its political subdivisions, of (1) the right to serve civil or criminal process over the federal enclave, of (2) any constitutionally permissible powers of taxation upon such property, persons and franchises within the boundaries so ceded (United States Naval Shipyard, Philadelphia, Pennsylvania), and (3) the Buck Act, 4 U.S.C. §§105-110, which gives the states full jurisdiction over the federal area to levy and collect income taxes as if such area was not a federal area, enable the City of Philadelphia to use the Pennsylvania Longarm Statute to serve a Complaint in Assumpsit for delinquent taxes due from a non-resident individual, where such income is derived from activities within the City of Philadelphia?

III. Is service of process, pursuant to the Pennsylvania Longarm Statute, upon a non-resident employee of the Philadelphia Naval Base, Philadelphia, Pennsylvania, who receives wages therefor, who accrues wage tax liability thereby, who is doing business in Pennsylvania as defined by the Pennsylvania Longarm Statute and who is within the jurisdiction of the Commonwealth of Pennsylvania, violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

COUNTER-STATEMENT OF THE CASE

Appellant is presently, and at all times pertinent hereto, a resident of the State of New Jersey. At all times in question in the appellee's complaint, appellant was employed as an engineering technician by the United States Naval Air Engineering Center (hereinafter referred to as "N.A.E.C.") located at the United States Naval Base at the foot of Broad Street in the City of Philadelphia, Commonwealth of Pennsylvania. The City filed a Complaint in Assumpsit against appellant, averring that appellant was so employed within the City of Philadelphia, and was obliged to pay earnings taxes to appellee, but had not done so.

The Complaint was served upon the appellant by serving the Secretary of the Commonwealth as agent of taxpayer pursuant to the Pennsylvania Longarm Statute, 42 P.S. §8301, et seq., and by registered mail, return receipt requested, mailed to appellant's residence, also in accordance with the Pennsylvania Longarm Statute.

Preliminary Objections were filed contesting *in personam* jurisdiction of the court on the grounds that: (1) appellant could not be served under that Act since he was not "doing business" within the Commonwealth of Pennsylvania (which is purely a state question and not at issue herein); (2) the Commonwealth of Pennsylvania does not have the right to enact legislation regulating activities upon a federal enclave; and (3) obtaining *in personam* jurisdiction over appellant herein by use of the Pennsylvania Longarm Statute, is a violation of his due process rights protected by the Fourteenth Amendment to the United States Constitution. Therefore, it was argued appellant could not be served in that manner.

On May 2, 1975, the Court of Common Pleas of Philadelphia County, by the Honorable Stanley M. Greenberg, dismissed appellant's Preliminary Objections and directed that an answer be filed within twenty (20) days from the date thereof.

Appellant filed a timely appeal to the Commonwealth Court from this Interlocutory Order. After argument before the Commonwealth Court on April 6, 1976, the Commonwealth Court, in a unanimous Opinion written by the late Harry A. Kramer, Judge of said Court, filed an Opinion and Order on February 8, 1977 affirming the dismissal of appellant's Preliminary Objections by the Court of Common Pleas of Philadelphia County. On March 10, 1977, appellant filed a Petition for allowance of appeal to the Supreme Court of Pennsylvania which was denied by said Court on June 10, 1977. On August 3, 1977, a Notice of Appeal to this Honorable Court was filed with the Commonwealth Court of Pennsylvania and on September 13, 1977, a Jurisdictional Statement was docketed with this Honorable Court to which this Motion to Dismiss or Affirm is filed for the following reasons.

SUMMARY OF REASONS FOR DISMISSING OR AFFIRMING APPEAL

1. Where the effect of an order is to remand the case for further judicial proceeding, that order is not a "final order" reviewable by this Honorable Court. *Rosenblatt v. American Cyanamid Co.*, *infra.*, cited by appellant, is an in chambers opinion and is factually and legally distinguishable from the instant case.

2. Use of the Pennsylvania Longarm Statute to serve process upon an employee of the federal government employed in a federal enclave located within the City of Philadelphia, Commonwealth of Pennsylvania, does not regulate any activities in that enclave and therefore does not violate the plenary powers clause of the United States Constitution.

3. The Buck Act, *infra*, receded to the Commonwealth the right to levy and collect taxes upon a federal enclave as if the enclave were not a federal area. This Act, in conjunction with the reservation of the right to serve civil and criminal process over the federal enclave, is clear authority to serve appellant pursuant to the Pennsylvania Longarm statute. Inherent within the right to levy and collect taxes, is the obligation to comply with due process and serve process upon a defendant. Since appellee has the right to serve process pursuant to the Longarm Statute against any individual employed in the private sector doing business in Philadelphia, the Buck Act gives appellee the right to serve a federal employe in the same manner. The decision of the Commonwealth Court comports with the manner of interpretation required for recessional powers and does not conflict with the general limitation section of the Act.

4. Due process requires minimal contacts which do not offend traditional notions of fair play and substantial justice. Appellant's activity of voluntarily coming to Philadelphia on a daily basis for his employment satisfies these tests.

I. Appellant Has Not Complied with the Jurisdictional requirements for Direct Appeal to this Honorable Court.

A. *The Opinion of the Commonwealth Court is not a Final Order which is a requirement for review by this Honorable Court.*

The Order of the Commonwealth Court from which appellant takes this appeal is not a final order within the meaning of 28 U.S.C. §1257(2).[1] That such an Order is not final, is clear from the fact that further judicial proceedings based upon this Court's decision, must occur in the lower courts before this litigation is concluded.[2]

The cases holding that an order remanding a case for further proceedings of a judicial nature is not a final order

1. The multitude of cases involving the "finality" of an order under 28 U.S.C. 1257(2) where the case was remanded for further proceedings, can be found in the annotation at 29 L.Ed. 2d 872.

2. Under Pennsylvania Rules of Civil Procedure, should this Court deny this appeal, or affirm the lower court's opinion, the dismissal of appellant's preliminary objections will stand and the case will be remanded to the trial court in order to grant the appellant time to file an answer to appellee's complaint pursuant to P.R.C.P. 1028 (see App. E, 10b hereof). Should this Court reverse the lower court, the preliminary objections of the appellant will be sustained; however, the case against appellant will not be dismissed. Since the preliminary objections go to the form of service used to obtain jurisdiction only, rather than to the issue of jurisdiction itself, the effect of the sustaining of appellant's preliminary objections will be to invalidate the service upon the appellant. The appellee would then have the opportunity to use some other method of service to obtain jurisdiction over the appellant. While personal service upon appellant within the federal enclave has historically proven fruitless for appellee, such service would be permitted under P.R.C.P. 1009(a) and (b) and 1010 (see App. C & D, 8b and 9b hereof) and which has been upheld by the federal courts. (See unpublished opinion in *City of Philadelphia v. United States of America, et al.*, E. D. Pa. Civ. Act No. 75-642 by the Honorable Joseph L. McGlynn, App. A, 1b hereof.) The appellee could therefore perfect service upon appellant within the Commonwealth of Pennsylvania giving the courts of this Commonwealth jurisdiction over the appellant.

under 28 U.S.C. §1257(2) are legion.[3] As far back as 1900 the Court noted that:

> We have held in too many cases even to justify citation, that a judgment reversing a case and remanding it for a new trial, or for further proceedings of a judicial character, is totally wanting in the requisite finality required to support a writ of error from the court. *Cincinnati Street Railway Co. v. Snell*, 179 U.S. 395, 397, 45 L.Ed. 248, 21 S.Ct. 205 (1900).

This is especially so where the decision of a state court is involved.

> Since its establishment, it has been a marked characteristic of the Federal judicial system not to permit an appeal until a litigation has been concluded in the court of first instant. See *Heike v. United States*, 217 U.S. 423, 54 L.Ed. 821, 30 S.Ct. 539; *Cobbledick v. United States*, 309 U.S. 323, 84 L.Ed. 783, 60 S.Ct. 540; *Catlin v. United States*, 324 U.S. 229, ante, 911, 65 S.Ct. 631 (decided February 26, 1945). This requirement has the support of considerations generally applicable to good judicial administration. It avoids the mischief of economic waste and of delayed justice. Only in very few situations, where intermediate rulings may carry serious public consequences, has there been a departure from this requirement of finality for Federal appellate jurisdiction. This prerequisite to review derives added force when the jurisdiction of this Court is invoked to upset the decision of a State court. Here we are in the realm of potential conflict between the courts of two different governments. And so, ever since 1789, Congress has granted this Court the power to intervene in State litigation only after "the highest court of a State in which a decision in the suit could be had" has ren-

3. For a collection of these cases, see 29 L.Ed. 2d 872, sec. 8.

dered a "final judgment or decree." Section 237 of the Judicial Code, 28 USCA §344(a), 8 FCA title 28, §344(a). This requirement is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our Federal system. *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 123-24, 89 L.Ed. 2092, 2097, 65 S.Ct. 1475 (1944).

Appellant attempts to escape this long line of precedent by citing Mr. Justice Goldberg's In Chambers Opinion of *Rosenblatt v. American Cyanamid Co.*, 15 L.Ed. 2d 39, 86 S.Ct. 1 (1965). This opinion is distinguishable from the instant appeal.

While *Rosenblatt* and the instant case show some similarities, there remains an important factual and legal distinction.

In *Rosenblatt*, the appellant-defendant was a resident of, and employed in, Italy; he further alleged that the center of gravity of the case was in Italy rather than in New York, the forum state. In the instant case, the appellant-defendant lives in New Jersey and works on a daily basis in Philadelphia. All relevant records and personnel involved in the case are located in Philadelphia, including the defendant who is generally within Philadelphia at least eight hours a day, at least five days per week. Furthermore it should be noted that litigation on the merits of this case, once appellant's procedural challenges are put to rest, is uncomplicated and cannot be considered in any way to be an unreasonable burden to the defendant. Most importantly, *Rosenblatt* decided a true jurisdictional question and a real issue as to which forum the appellant in that case would have to defend in. The instant case does not present these issues.

The only issue before this Honorable Court in this appeal is the propriety of the form of service under the Constitution of the United States.

The choice in *Rosenblatt* was Italy *or New York* (since defendant at time of appeal resided and worked in Italy

and personal service was impossible within New York). Should justice Goldberg have decided in favor of the defendant in *Rosenblatt*, New York would have permanently lost jurisdiction over the defendant. In the instant case the choice of forum is Pennsylvania or Pennsylvania. A decision adverse to appellee as a practical matter affects only the form of service by forcing appellee to serve defendant personally. Since this can be accomplished here, (see footnote 2 hereof) where it could not be in *Rosenblatt*, jurisdiction will still be with the courts of the Commonwealth of Pennsylvania.

Accordingly, it is respectfully submitted that because: (1) the great weight of precedent favors a finding that the instant appeal is not from a final order under 28 U.S.C. §1257(2) and (2) the only case cited by appellant for the proposition that this is a final order is the in chambers opinion, *Rosenblatt v. American Cyanamid, supra,* which is both factually and legally distinguishable from the instant case, this Honorable Court should dismiss this appeal for lack of jurisdiction.

II. The Case Presents no Substantial Question Not Previously Decided by this Honorable Court.

A. *Service of Process pursuant to the Pennsylvania Longarm Statute upon a New Jersey resident employed upon a federal enclave within Philadelphia, Pennsylvania, does not regulate any activities of that enclave.*

The use of the Pennsylvania Longarm Statute to serve process upon appellant in this case does not regulate any activity within the federal enclave, nor does it exercise legislative jurisdiction over the activity of the federal area by the state, and is, therefore, not in conflict with the Plenary Powers Clause, Article I, Sec. 8, Clause 17 of the United States Constitution. Since appellant has shown

absolutely no factual or legal basis for his proposition that the use of the Pennsylvania Longarm Statute conflicts with Article I, Sec. 8, Clause 17, this appeal should be dismissed for want of a substantial federal question or, the Order of the Commonwealth Court of Pennsylvania, from which this appeal is taken, should be affirmed.

Appellant misleads this Honorable Court by confusing two distinctly different issues. The issue of whether or not the Commonwealth has legislative jurisdiction to regulate activities upon the enclave is an entirely separate matter from the issue of whether or not the Commonwealth has legislative jurisdiction to serve defendant-appellant by means of the Longarm statute. Appellant brings about this confusion by claiming that the use of the Longarm statute to serve appellant is somehow regulating activities within the enclave. This is neither a factually nor a legally valid contention. Appellant, after confusing the issue, then argues from his faulty premise by contending that the use of the service of process statute in this case is an exercise of legislative jurisdiction over the enclave because it is regulation of the activities within the federal enclave. If such a regulation was present in the instant case, such an exercise of legislative jurisdiction would be, absent reservation of certain rights by the state or recession of rights to the state by the federal government, a violation of the Plenary Powers Clause. In no instance may a state interfere with the activities of the enclave related to the federal purpose to which the enclave is dedicated. *Fort Leavenworth Railroad Co. v. Lowe*, 114 U.S. 525,29 L.Ed. 264, 5 S.Ct. 995 (885). Appellant then concludes that there is no specific recession to allow regulation of activities on the enclave; therefore, the use of the Longarm statute upon appellant is a violation of the Plenary Powers Clause. Appellant's conclusion is faulty because it starts from a faulty premise, *i.e.* that the use of the Longarm statute is a regulation of activities upon the enclave. The use of the Longarm statute in this case is, however, not a regulation of

activities by the state within the federal enclave, and the very cases cited by appellant clearly support this view.

In *Stockwell v. Page Aircraft Maintenance, Inc.*, 212 F. Supp. 102 (M.D. Alabama, S.D. 1962) the Court stated;

> Service of process in this instance upon the agent of Grumman, at his Cairns Field Office, does not interfere with the governmental operation of the United States. 212 F.Supp. at 106.

In *Swanson Pointing Company v. Pointers Local Union No. 260*, 391 F.2d 523 (9th Cir. 1968) in footnote 2 the court noted:

> 2. In *James v. Dravo Contracting Co.*, 302 U.S. 134, 58 S.Ct. 208, 82 L.Ed. 155, the Supreme Court held that states can qualify sales of land to the United States so as to retain jurisdiction. Consistent therewith, Montana, in ceding to the United States exclusive jurisdiction of the lands on which Malstrom Air Force Base is situated, nevertheless reserved the right to serve and execute civil or criminal process within the limits of the territory acquired by the United States, in any suits or transactions for or on account of any rights obtained, obligations incurred or crimes committed in Montana, within or without such territory. General Cession Statute of Montana, Mont. Rev. Code §83-108 (1947). *The company is quite correct, however, in stating that Montana does not have legislative jurisdiction within the area encompassed by Malstrom Air Force Base.* [emphasis added] 391 F.2d at p. 525.

In both of the above cases, the use of the Longarm statute was upheld and both cases found that use of such a statute is not a regulation of activity within the enclave. It is true, of course, that service of process by Longarm statute was within the enclave in *Stockwell;* however, it is difficult to see how, if the service served within the enclave by Longarm statute in *Stockwell* was not an interference

with, or regulation of, activities within the enclave, that service by a similar Longarm statute outside the enclave can possibly be a regulation of the activities within the enclave as in the instant case.

Contrary to appellant's contention, it should be noted that neither the case of *Berube v. White Plains Iron Works, Inc.*, 211 F. Supp. 457 (N.D. Maine 1962) nor *Stockwell* stand for the proposition that service by Longarm statute is improper either within and/or without a federal enclave due to a lack of legislative authority over the enclave. Neither can these cases be construed to hold that the use of a Longarm statute to serve a party outside the enclave is in fact, any regulation of any activity within the enclave. Appellant's citation of *Stockwell*, as holding that, had substituted service been attempted upon the federal enclave, the service would have been improper, is either a simple mistake or a blatant attempt to mislead this Honorable Court. That issue was not before that court nor did that court even comment on that issue by way of dicta.

The case of *Berube v. White Plains Iron Works, supra* cited by appellant for the same proposition, was not decided on the issue of legislative jurisdiction over a federal enclave. In fact, the case was not decided on federal grounds at all.

> The parties agree that the initial question presented by the instant motion is whether this statute would be construed by the Maine courts to sustain the service of process in this case. *Waltham Precision Instrument Co. v. McDonnell Aircraft Corp.*, 310 F.2d 20 (1st Cir. 1962); *Brewster v. Boston Herald-Traveler Corp.*, 141 F.Supp. 760, 762 (D.Me. 1956). Since this Court answers that question in the negative, it does not reach the further question raised by defendant's contention that an attempt by the Maine courts to assert jurisdiction here would transgress federal constitutional limits. *Berube v. White Plains Iron Works, Inc.*, 211 F.Supp. at 458.

It is difficult to see how *Berube* can be cited for a holding on an issue it did not reach. The implication made by appellant, that the case of *Brennan v. Shipe*, 414 Pa. 258, 199 A.2d 467 (1964), indicates that the Pennsylvania courts have held longarm service, outside the enclave, improper where the cause of action arose within the enclave, is erroneous. That case involved a motor vehicle accident on a federal enclave. The Pennsylvania Supreme Court upheld use of the Longarm statute therein on grounds that retention by the Commonwealth of the right to serve process on the enclave, combined with the substantive right to decide the case given by 16 U.S.C. §457, was sufficient to find, that for purposes of that tort claim, the federal enclave was part of Pennsylvania and held that the use of the Longarm statute was therefore proper. There was in that case no specific recession by the federal government to use the Longarm statute. The Pennsylvania Supreme Court noted that it *might* have interpreted the Act of Congress, February 1, 1928 (16 U.S.C. §457), which provides for the use of state substantive law for personal injury claims where the cause of action occurred within a federal enclave, as a recession specific enough to warrant the use of the Pennsylvania Longarm statute. The court however, *declined* to do so, saying:

> It is not necessary for us to do so, however, for the Pennsylvania Nonresident Motorist Act is clearly a law of Pennsylvania which by its own terms governs "the rights of the parties" in an "action sought to recover on account of injuries sustained in" a federal enclave located "within the exterior boundaries" of Pennsylvania.
>
> The Pennsylvania Nonresident Motorist Act provides that a nonresident, or a resident who subsequently becomes a nonresident, appoints the Secretary of the Commonwealth as his agent to accept service of process for accidents or collisions "occurring within the Commonwealth."

The Court then discussed the case of *Kiker v. Philadelphia*, 346 Pa. 624, 31 A.2d 289 (1943) for the proposition that since the Buck Act, discussed in *Kiker*, gave Philadelphia the substantive right to impose upon those within the federal enclave the Philadelphia Wage Tax, for wage tax purposes, it made the enclave part of Philadelphia. By analogy the federal act, 16 U.S.C. §457, by making substantive state law applicable to personal injury cases arising within the enclave, brought the enclave within the boundaries of the Commonwealth for purposes of the personal injury action. Since the state retained the power of service over the enclave, the court concluded that substituted service by the non-resident motorist act was proper. A similar situation is present in the instant case. The Buck Act enables the City of Philadelphia to levy and collect the Philadelphia Wage Tax within the federal area as if the federal area was not a federal area; *i.e.*, part of the City of Philadelphia. The state has reserved the right to serve process in all civil and criminal cases. This right to serve process, combined with the substantive right to tax, clearly gives the state the right to use whatever means of process as would be available in any other state tax case. It is this separate recession of substantive right to tax that the Commonwealth Court speaks about when it requires something else in addition to the reservation of service of process. (Appellant's Jurisdictional Statement App. A at A3). *Brennan v. Shipe* is therefore of no help to appellant, either to show that a recession specific to the Longarm statute is necessary, as appellant seems to imply, or that the courts that have decided these issues are in conflict.

It is clear that appellant has cited no law or facts to show that the use of the Longarm statute, in the instant case, in any way regulates the activities or exercises jurisdiction over the enclave; *a fortiori*, appellant has not shown that the use of the Longarm statute, in the instant case, is in violation of the Plenary Powers Clause of the United States Constitution.

Appellant's contention that there is a conflict of decisions regarding the use of Longarm statutes where the finding of doing business under the state Longarm statute was based on activity within the enclave is also without merit. It is merely an attempt by appellant to create the impression that the above discussed issue is somehow a substantial one because a number of jurisdictions have entertained cases involving longarm statute service within a federal enclave. Appellant is in error. In all of the cases where violation of the Plenary Powers Clause was raised as a defense, the courts have upheld the disputed service. The other cited cases, with the exception of *Berube*, which has already been discussed, also upheld longarm service in these situations; however, the courts did not consider the Plenary Powers Clause argument. It is assumed that it was not raised or, as shown above, was so obviously without merit as to not require comment.

Accordingly, it is respectfully submitted that the use of the Pennsylvania Longarm Statute to serve process upon a civilian employee of the federal government employed upon a federal enclave, does not regulate any activities upon that enclave.

B. *The reservation by the Commonwealth of Pennsylvania, on behalf of itself and its political subdivisions: of* (1) *the right to serve civil or criminal process over the federal enclave; of* (2) *any constitutionally permissible powers of taxation upon such property, persons and franchises within the boundaries so ceded (the United States Naval Shipyard, Philadelphia, Pennsylvania); and* (3) *the Buck Act, 4 U.S.C. §§105-110, which gives the states full jurisdiction over the federal area to levy and collect income taxes as if such area was not a federal area, enables the City of Philadelphia to use the Pennsylvania Longarm Statute to serve a Complaint in Assumpsit for delinquent taxes*

due from a non-resident individual, where such income is derived from activities within the City of Philadelphia.

The Buck Act 4 U.S.C. §§105-110, combined with the reservation of the power to serve process by the Commonwealth of Pennsylvania, clearly gives the courts of the Commonwealth of Pennsylvania the right to use any form of service available under the laws of the Commonwealth, including the use of longarm service. To arrive at this conclusion, the Commonwealth Court did not have to breach the barrier of the Plenary Powers Clause as is contended by appellant, but only had to find sufficient legislative authority to serve appellant outside the enclave which, as noted previously, is an entirely different use. When the area of the federal enclave was ceded to the federal government by the Commonwealth of Pennsylvania, the Commonwealth retained concurrent jurisdiction with the United States for purposes of service of process as if the land had not been ceded. 74 P.S. §120.48 (See App. B at 7b hereof).

However, as the Commonwealth Court pointed out, by itself, the mere concurrent jurisdiction to make service without the substantive right to collect the tax is certainly insufficient to serve appellant by Longarm statute in this tax case. (Appellant's Jurisdictional Statement at A3). The court below noted that the substantive right to impose the tax is derived from the Buck Act. The Buck Act provides pertinently:

> (a) No person shall be relieved from liability from any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent

> and with the same effect as though such area was not a Federal area. 4 U.S.C. §106.
>
> It has been settled that this legislation grants appellee the power to "levy and collect" taxes on income earned by non-residents employed on League Island. *Non-Resident Taxpayers Association v. Municipality of Philadelphia*, 341 F.Supp. 1139, 1142 (D.N.J. 1971), aff'd. men., 406 U.S. 951 (1972); *Kiker v. City of Philadelphia*, 346 Pa. 624, 633, 31 A.2d 289, 294, *cert. denied*, 320 U.S. 741 (1943). (Appellant's Jurisdictional Statement at A3).

The Commonwealth Court further noted that the clear and unambiguous words of the Buck Act treat the federal enclave, for the purposes of the levying and collecting of income taxes, as part of the Commonwealth of Pennsylvania (Appellant's Jurisdictional Statement at A4). It is hard to see how Congress could have been more clear on this issue when it stated in the Act: "such state shall have *full jurisdiction and power to levy and collect* such tax in any Federal area within such state *to the same extent* and *with* the *same effect as though* such *area was not a federal area.*" 4 U.S.C. §106.

For appellant to argue that this Act is an inferred recession of power to the states, borders on the ludicrous. No inference whatsoever is necessary. The clear intent of the Buck Act is to remove the tax liability barrier that was present by virtue of the fact that the income sought to be taxed was earned on the federal enclave. Once this barrier is removed by the Act, and the levy and collection of this tax is permitted, as if the income was not earned within the enclave, then any contention that the Commonwealth could not use any means of service available, in the same manner as any other state tax case, including the Longarm statute in this case, is completely lacking in merit.

Also completely devoid of merit is appellant's contention that the Commonwealth Court recognized a possible

conflict between their interpretation of 4 U.S.C. §106 and 4 U.S.C. §108. Section 108 of the Buck Act provides:

> 108. Jurisdiction of United States over federal areas unaffected.—The provisions of sections 105 to 110 of this title shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area. (July 30, 1947, 389, §1, 61 Stat. 645.)

There are three reasons why the Court's recognition thereof creates no conflict: (1) Section 108 could not possibly be construed so as to remove the right of the Commonwealth to serve process in all cases for this right was never relinquished (That such a reservation is possible was decided by this Honorable Court in *Fort Leavenworth Railroad Co. v. Lowe, supra*); (2) since Section 106 provides the power to levy and collect by any means, as if the federal enclave were not a federal enclave, to read Section 108 in the manner urged by appellant would negate the clear intent of Section 106; and, (3) the report on the Buck Act from the Committee on Finance of the United States Senate indicates that Section 108 was included to make certain that the *criminal* jurisdiction of the federal government remained unaffected. S.REP. No. 1625, Calendar No. 1692, 76th Congress, 3rd Sess. 4 (May 16, 1940). Clearly, such a provision cannot possibly be read to limit civil process.

Appellant seeks to create a substantial federal question from the fact that this Honorable Court has not construed the Buck Act since the decision of *Howard v. Commissioners of the Sinking Fund of the City of Louisville*, 344 U.S. 624, 97 L.Ed. 617, 73 S.Ct. 465 (1953), and the fact that Section 108 has never been construed by this Honorable Court. In deciding a different type of case that involved a question of the power of the City of Louisville

to annex a federal enclave, as well as the right of the State of Kentucky to tax those upon the enclave, this Honorable Court in *Howard, supra*, summarized the effect of the Buck Act as:

> In other words, Kentucky was free to tax earnings just as if the federal government were not there. 344 U.S. at 628.

Appellee perceives no conflict between the interpretation given the Buck Act by this Honorable Court in *Howard* and the interpretation given the Buck Act by the Commonwealth Court in the instant case. It is respectfully submitted that 4 U.S.C. §§106 and 108 are so lacking in ambiguity, that another review by this Honorable Court is unnecessary. Furthermore, there is no question of general legislative powers in this case, as contended by appellant, for this Court to review. It is beyond question that 4 U.S.C. §106 provides the substantive right to levy and collect the tax, and the Commonwealth of Pennsylvania never relinquished the right to serve civil process. Nothing more is needed to hold the use of longarm statute valid in this instance.

Appellant's argument that the Commonwealth Court did not use the "required manner" of interpretation of congressional recession is totally without substance. Appellant's cases that allegedly deal with this point actually deal with the regulation of governmental activities within a federal enclave; and as this, is simply not at issue in this case, these cases are therefore not on point. The clear congressional mandate of recession that appellant claims must be present applies only in cases of attempts by the states to regulate activities within the enclave. As already noted, the instant case is simply not such a case and appellant has cited not one fact or case that points to a contrary conclusion. Appellant seeks further to confuse this Court by misciting *Kern-Limerich, Inc. v. Scurlock*, 347 U.S. 110 (1954). That case dealt with the issue of sovereign im-

munity of the federal government from state taxation. The court found that a tax on a contractor was invalid because the actual legal incidence of the tax would fall on the United States. The actual quote from this Honorable Court which appellant has miscited at p.12 of his Jurisdictional Statement is:

> The doctrine of sovereign immunity is so embedded in constitutional history and practice that this Court cannot subject the Government or its official agencies to state taxation without a clear congressional mandate. No instance of such submission is shown. 347 U.S. at 122.

Such claim of immunity from taxation by an employee of the federal government by virtue of the federal government immunity was settled by this Honorable Court, against the employee, in *Graves v. New York*, 306 U.S. 466, 83 L.Ed. 297, 59 S.Ct. 595 (1939) which is cited in one of the cases cited by appellant. *Mayo v. United States*, 319 U.S. 441, L.Ed. 1504 (1943).

Appellant cannot create a substantial federal question by confusing the issue before this Honorable Court. As noted before, the Commonwealth Court's interpretation of the Buck Act is entirely in accord with both this Honorable Court's interpretation of that Act in *Howard v. Commissioners of Sinking Fund of the City of Louisville, supra,* and the congressional intent of the Buck Act. Appellant's contention to the contrary is not founded in either the case law or the facts of this case.

Accordingly it is respectfully submitted that the Buck Act, when taken in conjunction with the reservation by the Commonwealth of Pennsylvania of the right to serve civil and criminal process over the enclave, gives clear and unambiguous authority for use of the Longarm Statute to serve civil process upon a civilian employee of the federal government.

C. *Service of process, pursuant to the Pennsylvania Longarm Statute, upon a nonresident employee of the Philadelphia Naval Base, Philadelphia, Pennsylvania, who receives wages therefor, who accrues wage tax liability thereby, who is doing business in Pennsylvania as defined by the Pennsylvania Longarm Statute, and who is within the jurisdiction of the Commonwealth of Pennsylvania, is not violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.*

The concept of due process, under the Fourteenth Amendment to the United States Constitution, as applied to the question of *in personam* jurisdiction is one which this Court has reviewed and discussed in depth ever since the landmark decision of *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed 565 (1878), which limited *in personam* jurisdiction to personal service of a defendant within the forum state. With the economic development of this country and the improvements and envolvement of new and more modern methods of communication and modes of transportation, a new body of law has evolved.[4] The hallmark of this body of law was the decision of this Honorable Court in *Interna-*

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4. *McGee v. International Life Insurance Co.*, 355 U.S. 220, 2 L.Ed. 2d 223, 78 S.Ct. 199 (1957):

> Looking back over this long history of litigation *a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents.* In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more states and may involve parties separated by the full continent. With the increasing nationalization of Commerce has come a great increase in the amount of business conducted by mail across state lines. *At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.* 355 U.S. at 222-23, 2 L.Ed. at 226 (emphasis added).

tional Shoe Co. v. Washington, 326 U.S. 310, 90 L.Ed. 95, 66 S.Ct. 154 (1945). The Court therein held that in order to satisfy due process requirements of the Fourteenth Amendment, *in personam* jurisdiction may only be obtained over a non-resident defendant in a foreign court if said defendant had minimum contacts with the forum state and the exercise of said jurisdiction did not offend traditional notions of fair play and substantial justice.[5] In order to compare the instant case to the standards set by this Court, a brief comparison of the operative facts in the leading cases to those of the instant case is enlightening.

In *International Shoe,* a Delaware Corporation with its principal office in St. Louis, Missouri, was engaged in the business of manufacture and sale of shoes and footwear; defendant therein had no office in Washington; entered into no contracts in Washington; maintained no inventory or merchandise in Washington; employed between 11 and 13 salesmen who resided in Washington but who were under direct supervision of the main office in St. Louis; provided salesmen with samples and places to exhibit same; did not permit salesmen to either contract in Washington or collect monies due thereon; and mer-

5. For application of these principles in Pennsylvania, see *Proctor & Schwartz, Inc. v. Cleveland Lumber Co.,* 228 Pa. Super 12, 323 A.2d 11 (1974), wherein the Pennsylvania Superior Court set forth the following guidelines consistent with *International Shoe, supra* and *Hanson v. Denckla, infra* (See App. A at A7-8 Appellant's Jurisdictional Statement).

> First, the defendant must have purposely availed itself of the privilege of acting within the forum state thus invoking the benefits and protections of its laws . . . Secondly, the cause of action must arise from the defendant's activities within the forum states . . . Lastly, the acts of the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over it reasonable. 228 Pa. Super at 19.

See also *Hart, et al. v. McCollum, et al.,* Pa. Super. , 376 A.2d 644 (1977).

chandise was invoiced at place of shipment. An action was brought against International Shoe by the State of Washington to recover contributions allegedly due by it to the State's Unemployment Compensation Fund. Service thereon was made personally upon a sales solicitor and by mail to the office in St. Louis. To the challenge to the Court's *in personam* jurisdiction, this Honorable Court after enunciating the aforesaid test held that the activities of the defendant's agents were deemed to be sufficient to satisfy due process. The Court stated:

> Presence in the state has never been doubted when the *activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on,* even though no consent to be sued or authorization to an agent to accept service of process has been given. 326 U.S. at 317, 90 L.Ed. at 102 (emphasis added).

In *McGee v. International Life Insurance Co.,* 355 U.S. 220, 2 L.Ed. 2d 223, 78 S.Ct. 199 (1957), decedent, during his lifetime, acquired a life insurance policy from an Arizona insurance company. Defendant therein, a Texas insurance company, subsequently assumed the insurers responsibility therein, mailed reinsurance certificates to decedent in California and received premium payments from him by mail from California. Upon decedent's demise, the beneficiary of said policy, made claim for the proceeds thereof. Claiming decedent committed suicide, defendant disclaimed liability and the beneficiary brought an action thereon in California. Service of process was accomplished in accordance with a California statute for service upon foreign corporations in causes of actions to enforce insurance contracts with residents thereof by registered mail. Judgment was obtained in California and suit was brought for enforcement thereof in Texas. Defendant challenged the constitutionality of service in the action brought in California alleging that since it did not have any officers or

agents in California, and had neither solicited nor engaged in any insurance business in California (other than the subject policy), it was therefore a violation of the due process provisions of the Fourteenth Amendment for the California Court to assume *in personam* jurisdiction over it with service of process performed by registered mail. This Honorable Court concluded that this single, isolated transaction in which the insurance company did nothing in the forum state other than mail a reinsurance certificate into it and receive insurance premiums from it, was sufficient to satisfy the constitutional requirements of due process (see footnote 4 hereof) and that *inconvenience to defendant was not a violation of due process.*

In *Hanson v. Denckla*, 357 U.S. 235, 2 L.Ed. 2d 1283, 78 S.Ct. 1228 (1958), a complex factual setting developed in determining whether certain property passed through the residuary trust of a decendent's will or an *inter vivos* trust created by decedent during her lifetime and over which she allegedly executed a power of appointment. The last will and testament was probated in Florida and the trustees of the trust were located in Delaware. At the time decedent created the subject trust, she was a Pennsylvania domiciliary; the trust assets were located in Delaware; the trustees did not have a Florida office. The trustees did not solicit any business in Florida either in person or by mail. After performing all activities relating to the trust, decedent relocated her domicile in Florida where she died years later. Service of process in an action brought in Florida was accomplished upon the non-resident trustees in Delaware by regular mail and publication in compliance with Florida law. Judgment was entered against trustees. In an action brought in Delaware by the trustees, the defendants therein asserted the Florida action was res judicata to the Delaware case and that the full faith and credit provision of the United States Constitution bound Delaware to enforce that judgment. The Delaware Court disagreed and this Honorable Court affirmed the Delaware decision. This Court held

that the attachment of *in personam* jurisdiction by the Florida Court was improper and in violation of due process for two reasons: first the minimal contacts test of *International Shoe, supra,* was not met since trustee performed no acts in Florida and did not exercise any privilege in Florida; and second, none of the activities of defendant out of which the subject litigation arose, occurred in Florida.

Compare these factual situations with the instant case wherein the record discloses that appellant for at least the three years at issue, purposefully and voluntarily came into the City of Philadelphia and performed services for an employer therein—the federal government. Appellant, of his own volition, came to Philadelphia on a regular and continuous basis during this period. He had the choice as to where he would work and he came to work in Philadelphia. Solely as a result of these activities within the City of Philadelphia, he derived compensation therefor and thereby became liable to the City of Philadelphia for a wage tax thereon. See *Kiker, supra,* wherein it was held that for the purpose of the Philadelphia Wage Tax, taxpayer therein *was performing services within the City of Philadelphia* for it is within the City of Philadelphia that he was the beneficiary of services provided by the City of Philadelphia. See also, *City of Philadelphia v. Kenny, et al.,* — Pa. Comm. Ct. — , 369 A.2d 1343 (1977);[6] and *N.R.T.A. v. Philadelphia,* 341 F. Supp. 1135, *aff'd* 406 U.S. 951 (1972), 341 F. Supp. 1139, *aff'd* 478 F.2d 456 (3d Cir. 1973).

In addition thereto, it should be noted that appellee has taken an active role, and has extended vast amounts of time and money in efforts to keep the Philadelphia Naval Base and Frankford Arsenal open. While we have failed to keep the Arsenal open, we have succeeded in keeping the Naval Base open without resorting to litigation. But

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6. This opinion is also reprinted in Respondent's Brief in Opposition to Petition for Writ of Certiorari in Appendix A. See footnote 10 thereof at B18.

for appellee's efforts, appellant would be without a job at the Philadelphia Naval Base. This is obviously a benefit which appellant has derived.

In the instant case, does the cause of action arise from defendant's activities within the forum state? Obviously, the answer is yes. Appellant was employed at the Philadelphia Naval Base; appellant received income therefor; Philadelphia Naval Base is located in the forum state; and appellant's Philadelphia Wage Tax liability is derived therefrom. Furthermore, the cause of action herein is appellant's failure to file a tax return or to pay wage tax which also occurred within Philadelphia. The filing of the return and payment of the tax was to have been done in the Municipal Services Building, Philadelphia, Pennsylvania. The failure to do this required legal act established the Municipal Services Building as the situs of this action and this situs is not within the federal enclave. *In re: Thompson,* 157 F. Supp. 93 (E.D. Pa. 1957), *aff'd sub nom United States ex rel. Thompson v. Lennox,* 258 F.2d 320 (3d Cir. 1958), *cert. denied,* 358 U.S. 931 (1959).

In the instant case, are appellant's acts substantial enough to make jurisdiction over him reasonable? The answer must be yes. Appellant came to Philadelphia daily to perform the services for which he was hired, and paid therefor. This connection with Philadelphia has been a continuous one and has covered at least each of the years before this Court. Compare this continuous activity with the single activity in *McGee, supra,* and *Rosenblatt, supra.*[7] In those cases, the activities involved were substantially less than in the instant case; and there due process requirements were met.

The only remaining contention is whether requiring appellant, an individual residing in New Jersey and employed in Philadelphia, to defend an action in Philadelphia Courts meets traditional notions of fair play and substantial justice.

7. Due process aspects of *Rosenblatt* discussed *infra.*

In support thereof, appellant argues that appellee could come to defendant's' own jurisdiction and institute suit for collection of its tax. In *Proctor, supra,* one factor which the Pennsylvania Superior Court looked to in determining traditional notions of fair play and substantial justice was physical or financial impossibility of the defendant-corporation to defend itself in the forum state. It is respectfully suggested that it is physically and financially impossible for plaintiff to litigate all of the cases it institutes against New Jersey residents employed upon Federal installations located in Philadelphia before the New Jersey courts.[8] An onerous burden would be inflicted upon appellee herein if, in each of the hundreds-upon-hundreds of cases in which appellee seeks enforcement of its wage tax ordinance against New Jersey residents, it was required to expend the time and money to send a representative to New Jersey each time a case was listed in any county in New Jersey. This should be compared with the burden upon appellant, *viz.* coming to Philadelphia to defend an action in Philadelphia. It was no burden upon appellant to come to Philadelphia daily to earn wages. Therefore, it can be no burden to come to Philadelphia to defend an action for collection of taxes derived from these wages earned in Philadelphia. Appellant contends that, notwithstanding defending a suit in Philadelphia, suit would still be required in New Jersey for enforcement thereof. What appellant neglects is that if suit is instituted in New Jersey, appellee must appear and prosecute each and every claim scattered throughout the State of New Jersey. However, if suit is brought in Philadelphia, the claims can be disposed of in large groups before a single judge in the same Court.[9] If judgment is entered therein,

8. See for example, *City of Philadelphia v. Kenny, supra,* wherein 18 such cases have been consolidated on a petition for writ of certiorari currently pending before this Honorable Court (October Term, 1977, No. 77-370).

9. Parenthetically, also avoiding the possibility of conflicting or inconsistent decisions of various judges.

the courts of New Jersey must recognize this judgment pursuant to the Full Faith and Credit provisions of the United States Constitution, Article IV Section 1. Practically speaking, it is true that to obtain compliance therewith, an action need be brought within New Jersey; but at that time the issues before the New Jersey court are narrowed and limited to the procedural questions of the propriety of the Service of Process. If this Honorable Court should rule in favor of appellee, that question would be further narrowed. At that point the question would be whether the City of Philadelphia had complied with the statutory procedure for longarm service, 42 Pa. Cons. Stat. Ann. §8307 (App.E. at A19, Jurisdictional Statement). The result thereof is extensive conservation of judicial economy and resources. Since appellant admits that he will ignore the determination made by the Pennsylvania courts and force the City to execute on the judgment, such contempt for the judicial process should not serve as the basis of appellant's claim of injustice in having to litigate in a Pennsylvania court.

In *Rosenblatt v. American Cyanamid, supra,* the identical specious argument was made by defendant therein, as was made by appellant herein at page 15, Jurisdictional Statement. Plaintiff therein was a large Maine corporation doing business in New York. Plaintiff filed an action alleging conspiracy to convert trade secrets. Defendant acting as an intermediary in Italy between a thief and an Italian pharmaceutical company, came to New York, examined stolen biological cultures and trade secrets, made a down payment thereon, and returned to Italy. This singular activity was defendant's sole connection to New York. Service of process was accomplished pursuant to the New York Longarm statute. As part of his challenge to this mode of service of process, defendant alleged: that this action was between a Maine corporation and a single individual; that he was located in a foreign country; that plaintiff was a half-billion dollar corporation with logistical and financial access to the Italian courts; that he would incur a

substantial expense and loss of income by being required to leave his job in Italy and come to the United States to defend this action; that he would be subject to a second suit in Italy; and that all the key and corroborating witnesses were located in Italy. Mr. Justice Goldberg speaking in this in chambers opinion held that while these positions related to the convenience of the parties, it did not relate to *in personam jurisdiction in a constitutional sense,* and that these hardships were not substantial enough to violate the substantial justice test of *International Shoe, supra.*[10] When a comparison is made between the "hardships" in the instant case, *i.e.* defending an action in a court located some 15-20 miles from his home and in a City to which he comes every day for his employment, and those present in *Rosenblatt,* it is obvious that no violation of substantial justice is made out by the Appellant.

In concluding comments upon the substantial justice test, Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois,* U.Ill L.F. 533 (1963) requires note. The author therein noted:

> . . . it is likely to be much more inconvenient and expensive for a resident of Texarkana, Texas, to defend a suit in El Paso, 900 miles away, than just across town in Texarkana, Arkansas. 1963 U.Ill L.F. at 534.

In the instant case, the same analogy applies. Appellant herein lives in southern New Jersey just across the Delaware River from Philadelphia. It would certainly be more inconvenient and expensive to defend an action in Passaic, New Jersey, or other Northern New Jersey locations than it would be to come to Philadelphia to defend an action.

The main thrust of appellant's due process argument is that the leading due process cases relate to use of long-

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10. See also, *McGee, supra,* wherein inconvenience to defendant was held by this Honorable Court not to be a violation of due process.

arm service upon a foreign corporation and that due process requires a stricter interpretation for an individual. In support thereof, appellant cites two cases, neither of which supports his position. *Flexner v. Farson*, 248 U.S. 289, 63 L.Ed. 250, 39 S.Ct. 97 (1919); and *Doherty & Co. v. Goodman*, 294 U.S. 623, 79 L. Ed. 1097, 55 S.Ct. 553 (1935).

In *McGee, supra*, this Honorable Court said:

> . . . a trend is clearly discernable toward expanding the permissible scope of state jurisdiction over foreign corporations *and other non-residents*. 355 U.S. at 222, 2 L.Ed. 2d at 226. (Emphasis added).

It is clear from this Court's statement that an individual be treated similar to a foreign corporation. Notwithstanding the foregoing in *Flexner, supra*, a suit was brought in Illinois to enforce a judgment entered in Kentucky. Service of process of the suit in Kentucky was accomplished upon an agent of defendant therein. In the suit in Illinois, defendant alleged that the individual who was served in Kentucky was not their agent. Therefore, service of process in Kentucky was defective. Plaintiff demurred to the allegations thereby admitting defendant's disavowal of the agency relationship in Kentucky. Clearly, a holding of defective service and no due process is proper. However, in the instant case we have service upon the actual defendant albeit through use of longarm service. It is therefore respectfully submitted that this case is distinguishable.

It should be further noted that the language of *Flexner*, seized upon by appellant, is also legally inapplicable hereto. In *Flexner*, the state had no regulatory authority over individuals as it did over corporations. Therefore, no consent to be served by substituted service could be inferred. In the instant case, the courts of the Commonwealth of Pennsylvania have already decided the state question of whether appellant's activities constituted

"doing business" within the forum state. With this determined, the state has inferred that doing such business constitutes the appropriate consent.

In *Doherty supra*, service was again accomplished by serving an agent within the forum state of a non-resident defendant. However, in *Doherty*, the defendant was one individual.[11] Service of process therein was sustained by this Honorable Court. Clearly, *Doherty* supports appellee's position and not appellant's.

Throughout his jurisdictional statement, appellant alludes to himself as merely a minor employee. Nowhere, except in the vivid imagination of appellant, did the Commonwealth Court render a decision concerning a "minor employee". Nowhere in the record or anywhere else for that matter was a distinction made as to a "minor employee" as opposed to any other type of individual. This distinction was purely an afterthought by appellant designed to create a smoke screen and to convince this Honorable Court into hearing yet another collateral attack on the time honored decision, *Kiker v. City of Philadelphia, supra*. All that the Commonwealth Court did was to decide that this appellant is an individual subject to service of process pursuant to the Longarm Statute (App. A. at A6). Clearly, this is a state question decided by the state courts and not cognizable by this Honorable Court.

Furthermore, the Longarm Statute makes absolutely no distinction among employee, employer, corporation, or other entity. The Act requires only that the individual to be served is a nonresident who shall have done any business within this Commonwealth.[12] The distinction between "minor employee" or other entities doing business is nonexistent. Appellant has desperately seized upon a chance word of the Pennsylvania Superior Court which bears no real relationship to the issue that was before the Common-

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11. See also *Currie, supra*, at pp. 560-561.

12. Which is also a state question which has been decided by the courts of the Commonwealth of Pennsylvania.

wealth Court in the instant case. The case from which appellant seeks to create this diversion is *Action Industries, Inc. v. Weideman*, 236 Pa. Super. 447, 346 A.2d 798 (1975). In that case, the Superior Court held that Weideman, a non-resident individual who was an employee of the Pennsylvania corporation perfonning his service for that Pennsylvania employer in the State of Ohio, was amenable to service under the Pennsylvania Longarm Statute. Defendant-Weideman's activities in the Commonwealth of Pennsylvania were as follows: "To protect Appellee's security interest appellant (Weideman) as an employee of appellee (Action Industries) was charged with the duty of making periodic telephone reports from the Plasta-Craft plant in Ohio to appellee's office in Allegheny." *Action Industries, Inc. v. Weideman, supra,* at 451.

After first deciding that Defendant-Weideman was subject to the Longarm Statute, the Court then considered whether the exercise of *in personam* jurisdiction complied with due process of law. In discussing whether or not notions of fair play and substantial justice as required by due process were offended by use of the Longarm Statute, the Superior Court noted that Weideman could certainly anticipate that his erroneous telephone reports caused damage within the State of Pennsylvania to the Pennsylvania Corporation receiving those reports. In so noting, the Court stated that Weideman was not a minor employee:

> Appellant's performance in reporting to Appellee was unsupervised by any other employee of appellee, so that appellee's reliance on appellant was complete. *Action Industries*, supra, at 451.

The Court did not intend nor did it set up a legal distinction as between "minor employees" and others as appellants in the instant case would lead this Court to believe. When the Court so characterized Weideman as not a "minor employee", the Court had already decided

that Weideman was an individual under the purview of the Longarm Statute. Therefore, whether Defendant Weideman was a "minor employee," if meaningful at all (which is a highly suspect conclusion when the Court's statement is taken in context) certainly does not even bear on the issue of whether defendant was an individual under the Statute, since the Court in that case had already decided that he was. It must again be stressed that such a distinction has no basis either in the case law, the Statute itself, or in the Commonwealth Court's opinion. This is a totally spurious issue anchored on appellant's baseless assertions.

Appellant's contention that a review of this decision by this Honorable Court is mandated by the words of Chief Justice Earl Warren in *Hanson v. Denckla,* 357 U.S. 253 (1958), is, at best, frivolous. Taxpayer's invocation of the opinion of Chief Justice Warren in this manner is completely removed from its original context. In that case, the Chief Justice, in discussing the trend of expanding personal jurisdiction over non-residents, had stated:

> As technological progress has increased the flow of commerce between states, the need for jurisdiction over non-residents has undergone a similar increase. At the same time, progress in communication and transportation has made the defense of the suit in a foreign tribunal less burdensome. In response to these changes the requirements for personal jurisdiction over non-residents have evolved from the rigid rules of *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565 to the flexible standard of *International Shoe Company v. Washington*, 326 U.S. 310, 90 L.Ed. 95, 66 S.Ct. 154, 161 A.R. 1057. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. See, *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 418 1 L.Ed. 2d 1456, 1459, 77 S.Ct. 1360. Those restrictions are more

than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respected states. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that state that are a prerequisite to its exercise of power over him. See, *International Shoe Company v. Washington*, 326 U.S. 310, 319 90 L.Ed. 95, 103, 66 66 S.Ct. 154, 161 ALR 1057.

There is no possible question in the instant case that the contacts of taxpayer are sufficient to meet the test of *International Shoe*. The implication by appellant that the Commonwealth Court in deciding that an individual who enters the Commonwealth of Pennsylvania on a daily basis, and who derives steady income therefrom, is amenable to service under the Pennsylvania Longarm Statute, is somehow "ringing the death knell of all restriction on in personal jurisdiction" is without merit. Furthermore, when the words of the Chief Justice are taken in the context in which they were made, the contention that those words necessitate a review of the Commonwealth Court's decision in the instant case by this Honorable Court is equally without merit.

Accordingly, it is respectfully submitted that service of process pursuant to the Pennsylvania Longarm Statute is not a violation of appellant's due process rights under the Fourteenth Amendment to the United States Constitution.

CONCLUSION

It is respectfully submitted that appellant has neither complied with the requirements for direct appeal to this Honorable Court nor presented any questions so substantial so as to need further argument before this Honorable Court.

WHEREFORE, appellee respectfully moves this Honorable Court to dismiss the instant appeal or, in the alternative, affirm the Order entered by the Commonwealth Court of Pennsylvania.

Respectfully submitted,

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City Solicitor
Richard S. Kohn
Assistant City Solicitor
By: Stewart M Weintraub
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Counsel for Appellee

Appendix A

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CITY OF PHILADELPHIA — CIVIL ACTION

v.

UNITED STATES OF AMERICA, *et al* — No. 75-642

MEMORANDUM

McGLYNN, J.

In this action, the City of Philadelphia seeks to enjoin the defendants from interfering with the service of legal process by duly authorized agents of the City upon civilian personnel at the Philadelphia Navy Base, a government enclave within the territorial limits of the City.

The defendants contend that process cannot be served except upon terms and conditions prescribed by them.

The matter came on for a final hearing and, after consideration of the evidence and the briefs and arguments of counsel, the court makes the following findings of fact and conclusions of law:

I.
FINDINGS OF FACT

1. The plaintiff is the City of Philadelphia, a city of the first class of the Commonwealth of Pennsylvania and is authorized to collect taxes under the laws of the Commonwealth of Pennsylvania.

2. The defendants are the United States of America, the Secretary of Defense, the Secretary of the Navy, the

Chief of Naval Operations, the Commandant of the Fourth Naval District, the Commander of the Philadelphia Naval Shipyard and the Commander of the Navy Support Activities of Philadelphia.

3. The United States of America maintains a Naval Base in the City of Philadelphia, Commonwealth of Pennsylvania, sometimes called the League Island Navy Yard, which employs approximately 10,000 civilian employees in twenty-five separate commands.

4. For the years prior to 1974, the deficiency in the City of Philadelphia earnings tax of civilian employees at the Philadelphia Navy Base amounted to $3,264,799.62 exclusive of penalties and interest divided among 5,961 individual tax payers.

5. When the City attempted to serve process on these delinquent tax payers, they were required to go through the following procedure. The process server, upon being identified and admitted through the main entrance of the Navy Base, was directed to the Base Security Headquarters where the documents intended for service were first examined by a staff Judge Advocate for validity. Upon approval, the document was forwarded to the Base Security Office, Detective Branch, which then contacted the Personnel Officer of the Command which employed the delinquent tax payer. The Personnel Officer contacted the employee's supervisor, and the supervisor ordered the employee to report to the Base Detective's Office to receive process. When the employee was contacted but refused to appear, he or she was disciplined under the relevant civil service regulations.

6. The City's request to be permitted to make service at the job site on those employees who refused to appear at the base security office was denied.

7. During the period commencing August 5, 1974 to October 17, 1974, the City attempted to obtain service on

approximately 280 Navy Yard employees. Of that number, 130 employees could not be notified because of retirement, transfer, sick or annual leave. Of the remaining 150, all of whom were notified to appear at the Security Building, only 26 did so and were served.

8. Civil Service disciplinary procedures take a minimum of 4 to 6 months and have not had any perceptible impact upon the cooperation of the delinquent taxpayers.

9. The activities at the Navy Base include heavy industrial work as well as projects of a classified nature requiring security clearance.

10. When the land on which the Navy Base is situated was ceded to the United States by the Commonwealth of Pennsylvania, the Commonwealth retained the right to serve civil and criminal process as well as the right to levy and collect taxes imposed by the Commonwealth and its political subdivisions upon persons within the boundaries so ceded.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this action.

2. Plaintiff is entitled to relief.

DISCUSSION

The Act of Assembly of the Commonwealth of Pennsylvania ceding jurisdiction to the United States explicitly reserved the right to execute civil and criminal process "in the same manner as if this jurisdiction had not been ceded." (74 P.S. §120.48).

It is clear that the Commandant is without authority to impose an absolute prohibition against the service of

process on delinquent taxpayers at their respective job sites within the Navy Base.

At the same time, however, the Court recognizes that the City has an obligation to exercise its rights to serve process in a manner which is consistent with the security requirements of the Navy Base and which will not unduly disrupt the orderly and efficient conduct of business.

After balancing the respective rights and obligations of the parties, we hereby enter the following DECREE.

Appendix A

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CITY OF PHILADELPHIA — CIVIL ACTION

v.

UNITED STATES OF AMERICA, *et al* — No. 75-642

AND NOW, this 18th day of June, 1975, it is hereby ORDERED ADJUDGED AND DECREED that the defendant, their agents, servants and employees, are permanently restrained from prohibiting Plaintiff, through its employees, servants and/or agents, from making service of all civil process upon civilian personnel at the Philadelphia Naval Base in any matter or in any place upon the Philadelphia Naval Base.

It is further ORDERED that the Defendants, their agents, servants and employees are to aid, assist and cooperate with Plaintiff or its employees, servants, and/or agents, duly authorized to make service of civil process upon civilian personnel at the Philadelphia Naval Base, in the making of such service in the following manner:

1. Plaintiff is to be limited to attempting service of civil process to ten individuals daily.

2. Upon being advised of the identity of the ten individuals upon whom service of civil process is to be made, Defendants, through their agents, servants and/or employees are to direct the individuals named therein that they are to report to the Security Headquarters to receive service of civil process.

3. If, and in the event, the named individual refuses to report as directed, a Security Officer is to accompany the duly authorized representative of Plaintiff to the place/or

location wherein the named individual may be found, and identify the individual to Plaintiff's representative for the purpose of service of civil process.

It is also ORDERED that upon notice to this Court by Plaintiff by ex parte affidavit, of noncompliance with this Order, by any of the Defendants herein named, their agents, servants or employees, a hearing will be fixed at which time Defendants will be directed to show cause why they should not be held in contempt of Court.

BY THE COURT:

/s/
Joseph L. McGlynn, Jr.

Appendix B

§120.48 Civil and criminal process; duration of jurisdiction ceded

The jurisdiction so ceded to the United States of America is granted upon the express condition that the Commonwealth of Pennsylvania shall retain concurrent jurisdiction with the United States in and over the lands and buildings aforesaid, in so far that civil process in all cases, and such criminal process as may issue under the authority of the Commonwealth of Pennsylvania against anyone charged with crime committed outside said land, may be executed thereon in the same manner as if this jurisdiction had not been ceded. The United States shall retain such jurisdiction so long as the said land shall be used for the purposes for which jurisdiction is ceded and no longer.

1945, March 28, P.L. 91, §3.

Appendix C

Rule 1009. Service

(a) The writ, or the complaint if the action is commenced by complaint or the complaint is used as alternative process as provided by Rule 1010(e), shall be served by the sheriff within thirty (30) days after issuance or filing. When the sheriff is a party to the action service shall be made by the coroner or other officer authorized by law to perform the duties of coroner.

(b) When the defendant is an individual, the writ of summons, or the complaint if the action is commenced by complaint, may be served

(1) by handing a copy to the defendant; or
(2) by handing a copy

(i) at the residence of the defendant to an adult member of the family with which he resides; but if no adult member of the family is found, then to an adult person in charge of such residence; or

(ii) at the residence of the defendant to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which he resides; or

(iii) at any office or usual place of business of the defendant to his agent or to the person for the time being in charge thereof.

* * *

Appendix D

Rule 1010. Reissuance, Reinstatement and Substitution of Writ or Complaint

(a) The prothonotary, upon praecipe and upon presentation of the writ or the complaint, shall continue its validity by reissuing the writ, or reinstating the complaint, by writing thereon "reissued," in the case of a writ, or "reinstated," in the case of a complaint.

(b) A writ may be reissued or a complaint reinstated at any time and any number of times. A new party defendant may be named in a reissued writ or a reinstated complaint.

(c) A substituted writ may be issued or a substituted complaint filed upon praecipe stating that the former writ or complaint has been lost or destroyed.

(d) A reissued, reinstated or substituted writ or complaint shall be served by the sheriff within thirty (30) days after reissuance, reinstatement or substitution.

Note of the Procedural Rules Committee

Original note rescinded 18 April 1975.

(e) If an action is commenced by writ of summons and a complaint is thereafter filed, the plaintiff instead of reissuing the writ may treat the complaint as alternative original process and as the equivalent for all purposes of a reissued writ, reissued as of the date of the filing of the complaint. Thereafter the writ may be reissued, or the complaint may be reinstated as the equivalent of a reissuance of the writ, and the plaintiff may use either the reissued writ or the reinstated complaint as alternative original process.

* * *

Appendix E

Rule 1028. Preliminary Objections

(a) Preliminary objections shall state specifically the grounds relied upon.

(b) All preliminary objections shall be raised at one time. They may be inconsistent. Two or more preliminary objections may be raised in one pleading.

(c) A party may file an amended pleading as of course within ten (10) days after service of a copy of preliminary objections. The court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall take evidence by depositions or otherwise.

(d) If the preliminary objections are overruled, the objecting party shall have the right to plead over within twenty (20) days after notice of the order or within such other time as the court shall fix.

(e) If the filing of an amendment, an amended pleading or a new pleading is allowed or required, it shall be filed within twenty (20) days after notice of the order or within such other time as the court shall fix.

Adopted June 25, 1946, effective January 1, 1947; amended March 28, 1973, effective July 1, 1973.

Supreme Court, U. S.
FILED
OCT 28 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

77-395

October Term, 1977

CITY OF PHILADELPHIA

v.

JOHN E. BULLION, *Appellant*

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977

City of Philadelphia

v.

John E. Bullion, *Appellant*

BRIEF IN OPPOSITION TO MOTION TO DISMISS

THE ORDER OF THE COMMONWEALTH COURT IS A FINAL DECREE FOR THE PURPOSES OF APPEAL UNDER 28 U.S.C. §1257.

The present appeal under 28 U.S.C. §1257(2) concerns a Pennsylvania trial court's denial of appellant's preliminary objection to the personal jurisdiction of the court over the appellant. The appeal to the Commonwealth Court was made pursuant to the Act of March 5, 1925, P.L. 23, 12 P.S. §§672, et seq., (Exhibit "A") which provides that such appeal is proper "as in cases of final judgment." This Statute provides that

> "A failure to appeal within the time specified will be deemed a waiver of all objections to jurisdiction over the defendant personally."

Under Pennsylvania law, the decision of an appellate court on an appeal from a determination concerning personal jurisdiction under the Act of March 5, 1925, becomes the law of the case and bars the defendant from raising the issue on the later appeal on the merits. *Drummond v. Drummond*, 414 Pa. 548, 200 A.2d 887 (1964). Thus, the decision of the Commonwealth Court in the present case will not be merged into a final decision in this case and is totally non-reviewable at the time of a review on the merits of this case. For state purposes it is final.

In the appellant's Jurisdictional Statement, two cases were cited which he believed sustained the jurisdiction of this Court on the question of finality—*Rosenblatt v. American Cyanamid Co.*, 86 S.Ct. 1, 15 L.Ed 2d 39 (1965) (Goldberg, J., in chambers) and *American Motorists Ins. Co. v. Starnes*, 425 U.S. 637 (1976). Both of these cases stand for the proposition that certain types of decrees, which might otherwise be deemed interlocutory, are final within the purview of 28 U.S.C. §1257. Annot., 29 L.Ed. 2d 872, 881 (1972). This proposition had its origin with this Honorable Court's decisions in *Mercantile Nat'l Bank v. Landeau*, 371 U.S. 555 (1963) and *Local 438 Construction and General Laborers' Union v. Curry*, 371 U.S. 542 (1963). *See*, Note, *The Requirement of a Final Judgment or Decree for Supreme Court Review of State Courts*, 73 Yale L.J. 515 (1964).

The appellant submits that the opinion in *Rosenblatt* clearly establishes his claim of finality in the present appeal. Mr. Justice Goldberg set forth a three-part test for determination of finality in the present type of case: (1) a final assertion of jurisdiction without further review of the issue in the state court; (2) a threat of serious erosion of national policies; and (3) a state judgment on an issue anterior to and separate from the merits and not enmeshed with the factual controversy of the case. In *Rosenblatt*, Mr. Justice Goldberg concluded that there would be a serious erosion of national policy in that there is a "due process right against subjection to excessive state assertions of *in personam* jurisdiction." 86 S.Ct. at 3. Mr. Justice Goldberg ruled that the judgment in the state court was a final one for purposes of 28 U.S.C. §1257.

The appellant contends that his case fits the three-part test of *Rosenblatt* in the following manner: (1) Under Pennsylvania law, there would be no further review of the determination of the Commonwealth Court; (2) there is not only a serious threat of erosion of the Due Process rights of the appellant, but also his rights under the Plenary Powers Clause of the United States Constitution; and (3) the decree concerned an issue which was anterior to and separate from the merits of the present case, and, like *Rosenblatt*, not enmeshed in the factual controversies of the case.

The appellee contends that the present appeal is distinguishable from *Rosenblatt* factually and legally in that the present case only concerns an issue of "the propriety of the form of service under the Constitution of the United States" and not a "true jurisdictional question and real issue as to which forum the appellant . . . would have to defend in." (Motion to Dismiss or Affirm, p. 8). This is a difference without a distinction if, in fact, this difference exists. Primarily, both cases concern a serious erosion of national policy—a violation of federal constitutional rights. In addition, the appellee makes the unjustified assumption that it would be able to make personal service in Pennsylvania upon the appellant. Just like in *Rosenblatt*, the choice is between two different forums—Pennsylvania and New Jersey. Therefore, it is submitted *Rosenblatt* is not only not distinguishable but controlling in the instant appeal.

Furthermore, this Honorable Court's recent decision in *American Motorists Ins. Co. v. Starnes, supra*, buttresses the appellant's claim of finality. In *American Motorists Ins. Co.*, the question on appeal under 28 U.S.C. §1257(2) was whether the venue statute of the State of Texas as

applied to foreign corporations was a violation of the Equal Protection Clause. It was merely a question of which county of the State of Texas had proper venue. This Honorable Court relegated the question of finality to a footnote and in *American Motorists Ins. Co.* concluded that the "interlocutory order" was final for the purposes of the statute. 425 U.S. at 642, n. 3.

It is respectfully submitted that the order of the Commonwealth Court in the present appeal is final for the purposes of appeal. Appellant prays that this Honorable Court deny the Appellee's Motion to Dismiss and note probable jurisdiction over this appeal.

Respectfully submitted,

KENNETH E. AARON
Counsel for Appellant

Exhibit "A"

§672. Jurisdiction determined by court; appeal

Wherever in any proceeding at law or in equity the question of jurisdiction over the defendant or of the cause of action for which suit is brought is raised in the court of first instance, it shall be preliminarily determined by the court upon the pleadings or with depositions, as the case may require; and the decision may be appealed to the Supreme Court or the Superior Court, as in cases of final judgments. 1925, March 5, P.L. 23, §1.

§673. Petition; rule to show cause

All such preliminary questions shall be raised by petition setting forth the facts relied upon, whereupon a rule to show cause shall be granted, and such preliminary question disposed of by the court. Such procedure shall be deemed de bene esse only and shall not operate as a general appearance. 1925, March 5, P.L. 23, §2.

§674. Time for appeal

The appeal here provided for must be taken and perfected within fifteen days from the date when the decision is rendered; shall be made returnable on the third Monday after it is taken; and shall be placed by the appellate court at the head of its argument list for civil cases to be heard at the earliest date consistent with its rules governing the presentation of appeals: Provided, That as to decision made prior to the approval of this act, the fifteen days limitation shall not begin to run until after the date of its approval. A failure to appeal within the time specified will be deemed a waiver of all objections to jurisdiction over the defendant personally. 1925, March 5, P.L. 23, §3.